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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 575

NORTH AMERICAN OIL CONSOLIDATED,
PETITIONER,

vs.

DAVID BURNET, COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 14, 1931

CERTIORARI GRANTED JANUARY 25, 1932

(36,389)

(36,389)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

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NORTH AMERICAN OIL CONSOLIDATED,
PETITIONER,

vs.

DAVID BURNET, COMMISSIONER OF INTERNAL REVENUE.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

INDEX

	Page
Proceedings before U. S. Board of Tax Appeals	1
Docket entries, No. 8714	1
Docket entries, No. 16,107	6
Petition, No. 8714	10
Deficiency letter	20
Amended petition, No. 8714	30
Answer, No. 8714	42
Amended answer to amended petition, No. 8714	45
Amendments to amended petition, No. 8714	49
Amendment to amended answer, No. 8714	51
Petition, No. 16,107	53
Deficiency letter	65
Answer, No. 16,107	78
Amended answer, No. 16,107	82
Amendment to amended answer, No. 16,107	86

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	Page
Findings of fact and opinion, Arundell, M.	88
Decision	145
Petition for review	146
Notice of petition for review	153
Statement of evidence	154
Petitioner's stipulation of facts	155
Respondent's stipulation of facts	162
Income tax returns for year ended December 31, 1916	167
Praecipe for transcript of record	179
Proceedings in United States circuit court of appeals, ninth circuit	181
Order of submission	183
Order directing filing of opinion and judgment	184
Opinion, Wilbur, J.	184
Judgment	193
Order directing modification of opinion and denying petition for rehearing	194
Amended opinion, Wilbur, J.	194
Clerk's certificate	204
Order allowing certiorari	205

[1*] DOCKET No. 8714.

Appeal of NORTH AMERICAN OIL CONSOLIDATED

vs.

COMMISSIONER OF INT. REV.

APPEARANCES.

For Taxpayer: (CHAS. D. HAMEL, Esq.

Withdrawn— (LEE I. PARKS, Esq.
(R. S. DOYLE, Esq.
HERBERT W. CLARK, Esq., and
LEON F. de FREMERY

For Commissioner: A. GEORGE BOUCHARD, Esq., and
SHELBY FAULKNER, Esq.

DOCKET ENTRIES.

1925.

Nov. 2—Petition received and filed.

Nov. 6—Copy of petition served on solicitor.

Nov. 6—Notification of receipt mailed taxpayer.

Nov. 7—Motion for leave to file amended petition with amended petition, filed by taxpayer.

Nov. 11—Granted—Both sides notified.

Nov. 14—Copy of amended petition served on solicitor.

*Page-number appearing at the top of page of original certified Transcript of Record.

1926.

Jan. 5—Answer filed by solicitor.

Jan. 9—Copy of answer served on taxpayer—Assigned to general calendar.

July 9—Withdrawal of appearance of L. D. Latham, filed.

Sept. 16—Motion for field hearing filed by taxpayer.

Sept. 17—Granted. Both sides notified.

1927.

Jan. 29—Amended answer filed by G. C.

Feb. 3—Copy of answer served on taxpayer—Gen. Cal. Copy served 2-23-27.

Feb. 25—Hearing set for 5-2-27 at San Francisco.

Mar. 25—Motion to amend filed by taxpayer—amendment tendered.

Apr. 1—Motion to file amendments to amended petition filed by taxpayer. Amendment tendered.

Apr. 4—Granted. Both sides notified.

Apr. 6—Copy of motion and amended petition served on general counsel.

Apr. 9—Application for subpoena filed by taxpayer.

Apr. 11—Subpoena issued.

May 2—Hearing had before Mr. Arundell on merits—amendment to amended answer to amended petition filed at hearing. Briefs due 8-1-27.

June 2—Transcript vol. 1—5 inc. of hearing 5-2-27, filed.

June 16—Motion for extension to 9-1-27 to file brief—filed by taxpayer.

July 16—Granted. Both sides notified.
Aug. 31—Brief filed by G. C.
Sept. 1—Brief filed by taxpayer.
Sept. 1—Findings of fact filed by taxpayer.

1928.

May 24—Findings of fact and opinion rendered. Judgment will be entered rule 50.

1929.

Aug. 20—Motion for order of redetermination, filed by G. C.
Aug. 22—Hearing set Sept. 11, 1929, on notice under Rule 50.

[2] DOCKET No. 8714.

1929.

Aug. 23—Consent to settlement filed by taxpayer.
Aug. 29—Decision entered, C. Rogers Arundell, Div. 7.

1930.

Feb. 13—Petition for review to U. S. Circuit Ct. of Appeals, 9th Circuit, with assignments of error filed by G. C.
Feb. 14—Proof of service filed by G. C.
Feb. 21—Notice of withdrawal of C. D. Hamel, R. S. Doyle and Lee I. Park as counsel for taxpayer, filed.
Feb. 26—Petition for review by U. S. Cir. Ct. of Ap. (9) with assignments of error filed by taxpayer.
Feb. 26—Proof of service filed by taxpayer.
Feb. 27—Proof of service of petition for review filed. (Taxpayer.)

Mar. 12—Notice of appearance of Herbert W. Clark and Leon F. de Fremery as counsel for taxpayer, filed.

Mar. 31—Motion for extension to June 10, 1930, for preparation of evidence and transmission and delivery of record filed by G. C.

Apr. 1—Order enlarging time to June 10, 1930, to prepare statement of evidence and transmit record, entered.

Apr. 14—Motion for enlargement of time to June 10, to prepare statement of evidence and transmit record, filed by taxpayer.

Apr. 16—Order extending time to June 10, 1930, for preparation of evidence and delivery of record *sur* petition for review, entered.

May 29—Motion for extension to Sept. 10, 1930, to settle and transmit record filed by G. C.

June 2—Order enlarging time to 9-10-30 for preparation of evidence and delivery of record, *sur* petition for review, entered.

June 9—Motion for extension to Aug. 1, 1930, to settle and transmit record, filed by taxpayer.

June 10—Order enlarging time to Sept. 10, 1930, for preparation and transmission of evidence, entered.

Aug. 11—Motion for extension to Nov. 10, 1930, to

prepare and deliver record filed by G. C.

Aug. 13—Order entered enlarging time to Nov. 10, 1930, for preparation of evidence and transmission and delivery of Record *sur* petition for review, entered.

Aug. 30—Motion for extension to Nov. 10, 1930, to prepare and deliver record, filed by taxpayer.

Sept. 2—Order entered enlarging time to Nov. 10, 1930, for preparation of evidence and delivery of records *sur* petition for review entered.

Oct. 11—Praecipe filed by G. C.

Oct. 11—Statement of evidence lodged by G. C.

Oct. 11—Proof of service of praecipe filed.

Oct. 11—Notice of lodgment of statement and hearing on Oct. 23, 1930, filed.

Oct. 23—Statement of evidence approved and ordered filed.

Oct. 23—Hearing had before Mr. Arundell, Div. 7, on approval of statement of evidence.

Nov. 10—Order extending time for transmission of record to Dec. 1, 1930, entered.

Now, November 6, 1930, the foregoing docket entries certified from the record as a true copy.

[Seal] B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[3] DOCKET No. 16,107.

Appeal of NORTH AMERICAN OIL CONSOLIDATED

vs.

COMMISSIONER OF INTERNAL REVENUE.

APPEARANCES.

For Taxpayer: C. D. HAMEL, Esq.
Withdrawn— L. I. PARKS, Esq.
R. S. DOYLE, Esq.
HERBERT W. CLARK, Esq., and
LEON F. de FREMERY, Esq.
For Commissioner: A. G. BOUCHARD, Esq.
SHELBY FAULKNER, Esq.

DOCKET ENTRIES.

1926.

May 18—Petition received and filed.
May 21—Copy of petition served on solicitor.
May 21—Notification of receipt mailed taxpayer.
June 24—Answer filed by solicitor.
Aug. 7—Copy of answer served on taxpayer. General calendar.
Sept. 16—Motion to transfer to filed calendar filed by taxpayer.
Sept. 17—Granted—both sides notified.

1927.

Jan. 25—Amended answer filed by G. C.

Feb. 3—Copy of answer served on taxpayer—assigned to general calendar.

Feb. 3—Copy of amended answer served on taxpayer.

Feb. 25—Hearing date set 5-2-27, San Francisco, Cal.

Apr. 9—Application for subpoena filed by taxpayer.

Apr. 11—Subpoena issued.

May 2-6—Hearing had before Mr. Arundell on merits. Amendment to amended answer to amended petition. Briefs due 8-1-27.

June 2—Transcript of hearing of May 2d, 3d, 4th, 5th and 6th, 1927, filed. (5)

June 15—Motion for extension of time to 9-1-27 to file brief, filed by taxpayer.

June 16—Granted. Both sides notified.

Aug. 31—Brief filed by G. C.

Sept. 1—Brief filed by taxpayer.

Sept. 1—Findings filed by taxpayer.

1928.

May 24—Findings of fact and opinion rendered, Mr. Arundell. Judgment will be entered under Rule 50.

1929.

Aug. 20—Motion for order of redetermination filed by G. C. See 8714.

Aug. 22—Hearing set Sept. 11, 1929, on notice under Rule 50.

Aug. 23—Consent to settlement filed by taxpayer. See 8714.

Aug. 29.—Order and decision entered. C. Rogers Arundell, Div 7.

1930.

Feb. 13—Petition for review to U. S. Circuit Ct. of Appeals, 9th Circuit, with assignments of error, filed by G. C. See 8714.

Feb. 14—Proof of service filed.

Feb. 21—Notice of withdrawal of C. D. Hamel, R. S. Doyle and Lee I. Park as counsel for taxpayer, filed.

Feb. 26—Petition for review by U. S. Cir. Ct. of Ap. (9) with assignments of error, filed by taxpayer.

[4] DOCKET No. 16107.

1930.

Feb. 26—Proof of service filed by taxpayer.

Feb. 27—Proof of service of petition for review filed. (Taxpayer.)

Mar. 12—Notice of appearance of Herbert W. Clark and Leon F. de Fremery as counsel filed.

Mar. 31—Motion for extension to June 10, 1930, to settle and transmit record, filed by G. C.

Apr. 1—Order extending time to June 10, 1930, for preparation of evidence and delivery of record, entered.

Apr. 14—Motion for enlargement of time to June 10, 1930, to prepare evidence and transmit record, filed by taxpayer. See 8714.

Apr. 16—Order extending time to June 10, 1930, for preparation of evidence and delivery of record, entered.

May 29—Motion for extension to Sept. 10, 1930, to settle and transmit record filed by G. C.

June 2—Order enlarging time to Sept. 10, 1930, for preparation of evidence and delivery of record, entered.

June 9—Motion for extension to Aug. 1, 1930, to settle and transmit record, filed by taxpayer.

June 10—Order enlarging time to Sept. 10, 1930, for preparation of evidence and delivery of record, entered.

Aug. 11—Motion for extension to Nov. 10, 1930, for preparation of evidence and delivery of record filed by G. C.

Aug. 13—Order enlarging time to Nov. 10, 1930, to prepare and transmit record entered.

Aug. 30—Motion for extension to Nov. 10, 1930, to prepare and transmit record filed by taxpayer.

Sept. 2—Order entered enlarging time to Nov. 10, 1930, for preparation of evidence and delivery of record, *sur* petition for review.

Oct. 11—Praecipe filed by G. C.

Oct. 11—Proof of service filed.

Oct. 11—Statement of evidence lodged.

Oct. 11—Notice of lodgment of statement and of hearing on Oct. 23, 1930, filed.

Oct. 23—Statement of evidence approved and ordered filed.

Oct. 23—Hearing had before Mr. Arundell, Div. 7, on approval of statement of evidence.

Nov. 10—Order extending time for transmission of record to Dec. 1/30 entered.

Now, November 6, 1930, the foregoing docket entries certified from the record as a true copy.

[Seal] B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

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[5] Filed Nov. 2, 1925.

United States Board of Tax Appeals.

DOCKET No. 8714.

Appeal of NORTH AMERICAN OIL CONSOLIDATED, 544 Market Street, San Francisco, California.

PETITION.

The above-named taxpayer hereby appeals from the determination of the Commissioner of Internal Revenue, set forth in his deficiency letter (IT:CA: 2558–6–60–D), bearing on its face the date, September 28th, 1925, and as the basis of its appeal sets forth the following:

1. The taxpayer is a California corporation with its principal office at 915 Balfour Building, San Francisco, California.

2. The deficiency letter (a copy of which is at-

tached) purports on its face to have been mailed to the taxpayer on September 28th, 1925, and states a deficiency in tax of $109,239.61.

3. The taxes in controversy are income and profits taxes for the calendar year 1917, and are more than $10,000, to wit: $109,239.61.

4. The determination of tax contained in said deficiency letter is based upon the following [6] errors.

(a) The Commissioner of Internal Revenue erred in failing and refusing to permit the taxpayer to deduct in determining its income for the calendar year 1917, the sum of $8,000 paid by the taxpayer as an ordinary and necessary business expense to the Oil Industry Association.

(b) The Commissioner of Internal Revenue erred in treating the $8,000 paid to the Oil Industry Association as a donation and not deductible.

(c) The Commissioner of Internal Revenue erred in failing and refusing to permit the taxpayer to deduct in determining its taxable income for the year 1917, $5,271.50 paid by the taxpayer for the repair and replacement of oil derricks damaged by fire.

(d) The Commissioner of Internal Revenue erred in requiring the taxpayer to capitalize the $5,271.50 expended by it during the year 1917 in repairing and replacing oil derricks damaged by fire.

(e) The Commissioner of Internal Revenue erred in including in the taxpayer's taxable income for 1917, $20,441.18, representing four per cent of

the oil recovered during that year from Section 2, T. 32 S., R. 23 E, Kern County, California, in which oil the taxpayer had no interest, and which oil was the [7] property of Charles S. Wheeler and John F. Bowie.

(f) The Commissioner of Internal Revenue erred in including in the taxpayer's taxable income for 1917, $20,441.18, and in treating said amount as a capital expenditure made by the taxpayer for the purpose of defending its title to Section 2, T. 32 S., R. 23 E., Kern County, California.

(g) The Commissioner of Internal Revenue erred in adding to the taxpayer's taxable income for the year 1917, $5,765.94 expended by the taxpayer as an ordinary and necessary business expense in the purchase and installation of gas pumping engines, sucker rods, small receiving oil tanks, well casing and tubing.

(h) The Commissioner of Internal Revenue erred in capitalizing $5,765.94 expended by the taxpayer during the year 1917 for the acquisition and installation of gas pumping engines, sucker rods, small oil receiving tanks, well casing and tubing.

(i) The Commissioner of Internal Revenue erred in failing and refusing to permit a deduction by the taxpayer for depletion for 1917, of oil properties located on Section 16, T. 32 S., R. 23 E., in Kern County, California, in the amount of $93,892.18.

(j) The Commissioner of Internal Revenue erred in limiting the taxpayer's deduction for depletion for the year 1917 of oil properties in said Section 16, T. 32 S., R. 23 E., to $43,917.54.

[8] (k) The Commissioner of Internal Revenue erred in reducing the taxpayer's invested capital for the calendar year 1917 in the amount of $33,882.51 alleged to represent a profit realized in 1918 on a 1914 contingent sale, which sale had been fully consummated in 1914 and the profit therefrom determined during that year.

(l) The Commissioner of Internal Revenue erred in reducing the taxpayer's invested capital for the calendar year 1917 in the amount of $602,820.96 alleged to represent depletion sustained in prior years.

(m) The Commissioner of Internal Revenue erred in reducing the taxpayer's invested capital for the calendar year 1917 in the amount of $1,638,611.21 alleged to represent excess valuation of property.

5. The facts upon which the taxpayer relies in support of its appeal are as follows:

(a) During the calendar year 1917, the taxpayer paid the sum of $8,000 to the Oil Industry Association. The Oil Industry Association was an organization created and maintained for the purpose of supplying the oil industry with statistics and other general information bearing on that industry. This association was not operated for profit. It was dependent upon amounts paid it by various oil companies to whom it supplied information.

[9] (b) The Commissioner of Internal Revenue erroneously disallowed as a deduction the amount paid by the taxpayer to the Oil Industry

Association on the ground that it constituted a donation. The amount paid was in nowise a donation. It was paid for services rendered by the Oil Industry Association and constituted an ordinary and necessary business expense.

(c) During the year 1917 certain of the oil derricks located on taxpayer's producing lands were damaged or destroyed by fire. In the repair and replacement of those oil derricks, the taxpayer necessarily expended during 1917 $5,271.50. This amount was deducted by the taxpayer in determining its 1917 taxable income as an ordinary and necessary business expense incurred in the maintenance and operation of producing wells.

(d) The Commissioner of Internal Revenue erroneously disallowed the deduction of $5,271.50 in determining the taxpayer's 1917 income on the ground that this represented a capital expenditure. The Commissioner then erroneously deducted from the taxpayer's 1917 income $1,646.19 alleged to represent the depreciated cost of the oil derricks damaged or destroyed by fire during 1917. The amount of $1,646.19 did not represent actual depreciated cost but depreciated cost as estimated by the Commissioner.

[10] (e) On January 1, 1916, the taxpayer entered into a contract with Charles S. Wheeler and John F. Bowie, attorneys at law, of San Francisco, California, by the terms of which the attorneys agreed to defend for the taxpayer a suit in which the United States sought to cancel all right, title and interest of the taxpayer to Section 2, T.

32 S., R. 23 E., M. D. M., Kern County, California. By the terms of the contract, if the attorneys were successful in defending this suit, they became absolute owners of four per cent of all the oil in Section 2. This contract ran with the land and was binding upon the taxpayer and all subsequent owners thereof.

(f) The attorneys named were successful in defending the taxpayer's title to said Section 2. In accordance with the terms of said contract, the attorneys received during the year 1917, $20,441.18, representing four per cent of all the oil recovered during that year from said Section 2. This portion of the oil recovered during that year was the absolute property of the attorneys. The taxpayer had no right, title or interest in said oil.

(g) The Commissioner of Internal Revenue erroneously added $20,441.18 representing four per cent of the oil recovered from said Section 2 during 1917, to the taxpayer's income for that year. The Commissioner of Internal Revenue should have valued [11] the said contract on January 1, 1916, and have capitalized the value thereof as of that date and added said value to the cost to the taxpayer of said Section 2.

(h) During the year 1917, the taxpayer expended $5,765.94 in the purchase and installation of gas pumping engines, sucker rods, small receiving tanks, well casing and tubing. The Commissioner of Internal Revenue erroneously disallowed this deduction and required the taxpayer to capitalize said $5,765.04.

(i) The gas pumping engines in question were used for the purpose of operating the pumps which drew the oil from the wells. These engines were operated continuously twenty-four hours a day, were exposed to the action of the elements, and in no event had a useful life in excess of one year.

The sucker rods are jointed rods inserted in the well tubing to which is attached the pump which draws the oil from the ground. These rods operate continuously twenty-four hours a day and are subject to great wear and tear and do not have a useful life in excess of one year.

The small oil receiving tanks are small tanks of fifty to one hundred barrel capacity. They are of thin gauge sheet metal construction and have a useful life of not more than one year.

The well casing is composed of a number of joints inserted in the drill hole. The replacement [12]

The well casing is composed of a number of joints inserted in the drill hole. The replacement of well casing joints in producing wells is a maintenance charge and constitutes an ordinary and necessary business expense. Tubing is placed inside the casing. The pump and sucker rods operate inside the tubing. The tubing is subject to great wear and tear due to the action of the pump and sucker rods and does not have a useful life in excess of one year.

(j) In determining the taxpayer's depletion on its properties for the year 1917, the Commissioner allowed a deduction of $101,368.87. Of this amount $57,451.33 was allowed on Section 2, T. 32 S., R.

23 E., Kern County, California. The balance $43,917.54 represents depletion allowed on Section 16, T. 32 S., R. 23 E. The Commissioner should have allowed as depletion on said Section 16, $93,892.18 on the basis of the March 1, 1913, value thereof.

(k) During the year 1914, the taxpayer sold certain oil properties in Section 4, T. 11 N., R. 23 W., S. B. M., Kern County, California. Payment was to be made thereafter in oil as produced. The taxpayer determined in 1914 its profit from this transaction, which was duly reported to its stockholders and taken into its books of account.

(l) On January 1, 1917, there was still due to the taxpayer on said contract, $33,882.51. [13] In determining the taxpayer's invested capital for 1917, the Commissioner deducted the amount stated above. This amount, $33,882.51 should have been included in the taxpayer's invested capital for all years subsequent to 1914, including the year 1917, as the profit was actually realized during the year 1914.

(m) In determining the taxpayer's invested capital for 1917, the Commissioner reduced the invested capital as shown by its books by the amount of $602,820.96 alleged to represent depletion sustained in prior years. Inasmuch as depletion has been held not to be a charge against capital, this reduction was erroneous.

(n) Prior to February 10, 1910, the date of the organization of this taxpayer as a corporation, the Louis Titus Pool, a syndicate, and the Hartford

Oil Company, a corporation, began the acquisition of certain oil properties located in Sections 16, 22 and 26 in T. 32 S., R. 23 E., M. D. M., Kern County, California. No oil was being produced on these properties at the time of their acquisition by the syndicate and the Hartford Oil Company. During the latter part of 1909 and up to February 10, 1910, the syndicate and the corporation developed these properties and brought in several producing wells.

(o) On February 10, 1910, the Louis Titus Pool and the Hartford Oil Company sold all their [14] properties in the sections above named to this taxpayer in exchange for this taxpayer's bonds of the par value of $825,000.00 and this taxpayer's stock of the par value of $8,250,000.00. Subsequently, May 27th, 1912, based upon numerous sales to outside investors of taxpayer's stock, the par value of the stock was reduced, and twenty shares of the par value of $1.00 each were issued in exchange for each former share of the par value of $100.00. The properties acquired by the taxpayer on February 10, 1910, were thereupon carried on the taxpayer's books at their cost on the basis of bonds of the par value of $825,000.00 and stock of the par value of $1,650,000 issued therefor. The properties acquired by the taxpayer February 10, 1910, were worth at the date of acquisition and on March 1, 1913, and January 1, 1914, not less than the par of the securities issued therefor.

(p) The Commissioner of Internal Revenue in computing the taxpayer's invested capital for the calendar year 1917 erroneously reduced the tax-

payer's invested capital for that year in the amount of $1,638,611.21 alleged to represent "excess valuation of property." The properties in question were worth in February 10, 1910, March 1, 1913, and January 1, 1914, not less than the value at which they were carried on said taxpayer's books. The taxpayer's assets were [15] worth during the calendar year 1917 not less than the amount at which they were carried on the taxpayer's books.

6. The taxpayer in support of this appeal relies upon the following propositions of law:

(a) Section 12 of the Revenue Act of 1916, as amended, provides for the deduction in determining net income of all ordinary and necessary expenses incurred and paid during the taxable year.

(b) Sections 5 and 12 of the Revenue Act of 1916, as amended, and Article 170 of Regulations 33 issued under said Revenue Act of 1916, as amended, provide for a reasonable deduction for depletion of oil properties based on the March 1, 1913, value.

(c) Section 207 of the Revenue Act of 1917 provides for the inclusion in invested capital of the value as of January 1, 1914, of property paid in for stock.

(d) The Court of Claims in the case of Ludey vs. The United States held that depletion of oil properties was not a charge or depletion of capital.

WHEREFORE, this taxpayer respectfully prays that this Board may hear and determine its appeal.

CHARLES D. HAMEL,
RICHARD S. DOYLE,
L. DANA LATHAM,
Attorneys for Taxpayer.

[16] District of Columbia,
City of Washington,—ss.

Frank Evans, being first duly sworn deposes and says that he is the secretary of North American Oil Consolidated, the taxpayer named in the foregoing petition, and is duly authorized to verify the same; that he has read the said petition and that the facts stated therein are true.

FRANK EVANS.

Subscribed and sworn to before me this 2d day of November, A. D. 1925.

[Seal] MAMIE CAROLYN GILES,
Notary Public, D. C.

[17] TREASURY DEPARTMENT,
Washington.

September 28, 1925.

Office of
Commissioner of Internal Revenue.
IT:CO:2558-6-60-D
North American Oil Consolidated,
544 Market Street,
San Francisco, California.

Sirs:

The determination of your income and profits tax liability for the year 1917, as set forth in letter dated December 23, 1922, has been reconsidered

in connection with return filed, an examination of the books of account and records and a conference held in the Unit May 7, 1924, and a deficiency in tax, in the amount of $109,239.61 has been disclosed in accordance with the enclosed statement.

In accordance with the provisions of Section 274 of the Revenue Act of 1924, you are allowed 60 days from the date of this letter within which to file an appeal to the Board of Tax Appeals contesting in whole or in part the correctness of this determination.

Where a taxpayer has been given an opportunity to appeal to the Board of Tax Appeals and has not done so within the 60 days prescribed and an assessment has been made, or where a taxpayer has appealed and an assessment in accordance with the final decision on such appeal has been made, no claim in abatement in respect of any part of the deficiency will be entertained.

If you acquiesce in this determination and do not desire to file an appeal, you are requested to sign the enclosed agreement consenting to the assessment of the deficiency and forward it to the Commissioner of Internal Revenue, Washington, D. C. for the attention of IT:CA:2558-6-60-D. In the event that you acquiesce in a part of the determination, the agreement should be executed with respect to the items agreed to.

Respectfully,

D. N. BLAIR,

Commissioner.

By (Signed) J. C. BRIGHT,

Deputy Commissioner.

Enclosures:
Statements,
Agreement—Form A.

[18] STATEMENT.

IT:CA-2558-6-60D.

In re: NORTH AMERICAN OIL CONSOLIDATED,
544 Market Street,
San Francisco, California.

Year	Deficiency in Tax
1917.	$109,239.61

1917.

Net Income reported on return		$150,700.74
Add:		
1. Donations disallowed	$8,035.00	
2. Burned wells rebuilt	5,271.50	
3. Income Tax	285.07	
4. Legal expense defending title	35,795.54	
5. Capital expenditures disallowed as expense.	5,765.94	
6. Receivers expense for 1916.	722.00	
7. Contingent profit on 1914 sale	32,293.47	
8. Salaries of officers for 1916	3,383.31	
9. Depletion disallowed	155,160.91	

10.	Taxes in excess of accrual	1,703.21	$248,415.95
	Total		$399,116.69
	Deduct:		
11.	Contingent profit on 1914 sale	$33,882.51	
12.	Fire loss sustained	1,646.79	
13.	Donated stock credited to surplus	200.00	
14.	Depreciation adjustment	66,758.30	
15.	Legal expense not deducted	14,560.85	
16.	Depreciation allowed	13,917.44	$130,965.29
	Corrected Net Income		$268,151.40

[19] In Re: North American Oil Consolidated.

Explanation of Adjustments to Net Income.

Statement.

1. Donations are not an allowable deduction under Article 135 of Regulations 33.

2. Burned wells rebuilt should be capitalized as agreed upon in conference of May 7, 1924.

3. Income tax has been disallowed as a deduction from income under Article 191 of Regulations 33.

4. Legal expense for defending title is a part of the cost of the property and should be capitalized, under Article 107, of Regulations 33.

5. Capital expenditures for casing, tubing, etc., have been disallowed as expense, as per conference of May 7, 1924.

6. Receiver's expense for 1916 has been disallowed as a deduction for 1917.

7. Contingent profit on 1914 sale realized in 1917 has been added to income. (See Contra Item 11.)

8. Salaries of officers for 1916 have been disallowed as a deduction for 1917.

9. Depletion disallowed has been computed as follows:

Depletion claimed $256,329.78, less depletion allowed, $101,368.87, equals $156,160.91, depletion disallowed.

10. Taxes paid in excess of accruals have been disallowed.

11. Contingent profit on 1914 sale shown by taxpayer has been allowed as a deduction, for the reason that the correct amount is shown under Item 7.

12. Fire loss sustained in 1917, not shown on the books, has been allowed as a deduction.

13. Donated stock credited to surplus has been allowed as a deduction account no profit realized.

14. Depreciation adjustment has been allowed as a deduction from income.

15. Legal expense not deducted has been allowed as a deduction from income.

16. Depreciation allowed as shown in the enclosed schedule has been allowed as a deduction.

[20] In Re: North American Oil Consolidated.

Statement.

Invested Capital.

Capital stock and surplus shown by the balance Sheet as at December 31, 1916 ..... $1,998,558.66

	Add:		
1.	Paid in surplus account stock sales in 1910	$50,000.00	
2.	Organization expenses	20,000.00	
3.	Depreciation charged off restored	730,788.95	
4.	Depletion charged off restored	203,036.51	1,003,825.46
	Total		$3,002,384.12
	Deduct:		
5.	Salaries of officers for 1916	3,393.31	
6.	Receivers expense for 1916	722.00	
7.	Donations for 1916..	7,000.00	
8.	Income tax paid in 1916	156.67	
9.	Contingent profit on 1914 sale	33,882.51	
10.	Depreciation allowed, prior years	293,495.51	
11.	Depletion sustained, prior years	602,820.96	
12.	Excess valuation of property	1,638,611.21	2,580,072.17
	Adjusted invested capital		$ 422,311.95

Explanation of Adjustments to Invested Capital.

1. Paid in surplus (or appreciation of section

16) has been allowed as recommended by Valuation Section Report dated July 30, 1925.

2. Organization expenses charged off in 1910 has been restored to invested capital.

3. Depreciation charged off in books has been restored account corrected deduction as shown under Item 10.

[21] In Re: North American Oil Consolidated.
Statement.

4. Depletion charged off in books has been restored account the corrected deductions as shown under Item 11.

5. Salaries of officers for 1916 have been deducted from invested capital as of December 31, 1916.

6. Receiver's expense for 1916 has been deducted from invested capital as at December 31, 1916.

7. Donations for 1916 have been deducted from invested capital as at December 31, 1916.

8. Income tax paid in 1916 has been deducted from invested capital as at December 31, 1916.

9. Contingent profit on 1914 sale has been disallowed as an addition to invested capital prior to the actual receipt thereof.

10. Depreciation allowed for prior years has been computed as shown by the enclosed schedule and is considered fair and reasonable.

11. Depletion sustained for prior years has been allowed as shown in Oil and Gas Valuation report dated July 30, 1925, a copy of which has been furnished you.

12. Excess valuation of property paid in for stocks and bonds has been disallowed as a part of invested capital.

Computation of Tax.

Excess profits tax	$109,613.40
2% Income tax	3,170.96
4% Income tax	6,341.52
Total Tax assessable	$119,125.68
Original tax assessed	9,886.07
Deficiency in Tax	$109,239.61

The information contained in the return, Revenue Agent's report and your protest, has been carefully considered in determining the tax liability as set forth herein.

Payment should not be made until a bill is received from the Collector of Internal Revenue for your district, and remittance should then be made to him.

Statement.

Depreciation on Schedule.

Property.	1910.	1911.	1912.	1913.	1914.
20% assets	$37,983.99	$59,668.13	$49,723.45	$44,648.61	$44,881.96
40% assets	31,010.95	26,477.39	15,113,42	26,088.60	18,734.71
F. W. and Section 14				13,552.26	2,599.40
Totals	$68,994.94	$86,145.52	$64,836.87	$84,269.95	$66,206.07
F. W. and Section 14, ...				4,589.55	8,898.60
Section 22, ...	43,031.83	91,961.53	70,456.36	49,901.92	41,656,50
Section 26, ...	19,603.09	47,377.16	51,187.94	48,815.66	34,,086.33
Grand Total.....	$131,629.86	$225,494.21	$186,481.17	$185,577.08	$150,848.50
Accumulated Total	$131,629.86	$357,114.07	$643,595.24	$729,172.32	$880,020.02

David Burnet vs.

Property	1915	1916.	1917.	1918.	1919.
20% assets	$53,917.22	$15,801.94	$12,496.47	$9,665.42	$7,714.59
40% assets	9,396.35	5,061.99	1,420.97	3,026.10	2,054.90
F. W. and Section 14					
Totals	33,313.57	$20,863.93	$13,917.44	$12,691.52	$9,769.49
F. W. a... Section 14, Section 22, Section 23	$23,830.09				
Grand Total	57,143.66	$20,863.93	$13,917.44	$12,691.44	$9,769.49
Accumulated, Total	$937,164.48	$958,028.41	$307,412.95	$320,104.47	$329,873.96
Accumulated, total on property sold and abandoned		664,532.90			
Accumulated depreciation revised		$293,495.51	$307,412.95	$320,104.47	$329,873.96

[23] In re: North American Oil Consolidated.

Statement.

Condensed Balance Sheet as at January 1, 1917.

Assets, other than Oil Wells and Equipment		$501,544.09
Depreciation on above.....		289,078.34
Organization expense.....		
Oil Lands, Wells and Equipment		1,204,582.25
Total		$2,015,202.68
Liabilities, balance sheet..	$1,254,250.73	
Accrued officers' salaries..	3,383.31	
Accrued donations	7,000.00	
Accrued receivers expense.	722.00	
Accrued income tax.....	156.67	
Contingent profit	33,882.51	
Depreciation allowed....	293,495.51	1,592,890.73
Invested capital		$422,311.95

[24] Filed Nov. 11, 1925.

United States Board of Tax Appeals.

DOCKET No. 8714.

Appeal of NORTH AMERICAN OIL CONSOLIDATED, 544 Market Street, San Francisco, California.

AMENDED PETITION.

The above-named taxpayer hereby appeals from

the determination of the Commissioner of Internal Revenue, set forth in his deficiency letter (IT:CA:-2558–6–60–D), bearing on its face the date, September 28th, 1925, and as the basis of its appeal sets forth the following:

1. The taxpayer is a California corporation with its principal office at 915 Balfour Building, San Francisco, California.

2. The deficiency letter purports on its face to have been mailed to the taxpayer on September 28th, 1925, and states a deficiency in tax of $109,-239.61.

3. The taxes in controversy are income and profits taxes for the calendar year 1917, and are more than $10,000, to wit: $109,239.61.

4. The determination of tax contained in the said deficiency letter is based upon the following [25] errors.

(a) The Commissioner of Internal Revenue erred in proposing any additional tax against the taxpayer for the calendar year 1917, because the determination, assessment and collection of any additional tax for the year 1917 was barred by the statute of limitations provided by Section 250 (d) of the Revenue Act of 1921, and Section 277 of the Revenue Act of 1924.

(b) The Commissioner of Internal Revenue erred in failing and refusing to permit the taxpayer to deduct in determining its income for the calendar year 1917, the sum of $8,000 paid by the taxpayer as an ordinary and necessary business expense to the Oil Industry Association.

(c) The Commissioner of Internal Revenue erred in treating the $8,000 paid to the Oil Industry Association as a donation and not deductible.

(d) The Commissioner of Internal Revenue erred in failing and refusing to permit the taxpayer to deduct in determining its taxable income for the year 1917, $5,271.50 paid by the taxpayer for the repair and replacement of oil derricks damaged by fire.

(e) The Commissioner of Internal Revenue erred in requiring the taxpayer to capitalize the [26] $5,271.50 expended by it during the year 1917 in repairing and replacing oil derricks damaged by fire.

(f) The Commissioner of Internal Revenue erred in including in the taxpayer's taxable income for 1917, $20,441.18, representing four per cent of the oil recovered during that year from Section 2, T. 32 S., R. 23 E., Kern County, California, in which oil the taxpayer had no interest, and which oil was the property of Charles S. Wheeler and John F. Bowie.

(g) The Commissioner of Internal Revenue erred in including in the taxpayer's taxable income for 1917, $20,441.18, and in treating said amount as a capital expenditure made by the taxpayer for the purpose of defending its title to Section 2, T. 32 S., R. 23 E., Kern County, California.

(h) The Commissioner of Internal Revenue erred in adding to the taxpayer's taxable income for the year 1917, $5,765.94 expended by the taxpayer as an ordinary and necessary business expense

in the purchase and installation of gas pumping engines, sucker rods, small receiving oil tanks, well casing and tubing.

(i) The Commissioner of Internal Revenue erred in capitalizing $5,765.94 expended by the taxpayer during the year 1917 for the acquisition and [27] installation of gas pumping engines, sucker rods, small oil receiving tanks, well casing and tubing.

(j) The Commissioner of Internal Revenue erred in failing and refusing to permit a deduction by the taxpayer for depletion for 1917, of oil properties located on Section 16, T. 32 S., R. 23 E., in Kern County, California, in the amount of $93,892.18.

(k) The Commissioner of Internal Revenue erred in limiting the taxpayer's deduction for depletion for the year 1917 of oil properties in said Section 16, T. 32 S., R. 23 E., to $43,917.54.

(l) The Commissioner of Internal Revenue erred in reducing the taxpayer's invested capital for the calendar year 1917 in the amount of $33,882.51 alleged to represent a profit realized in 1918 on a 1914 contingent sale, which sale had been fully consummated in 1914 and the profit therefrom determined during that year.

(m) The Commissioner of Internal Revenue erred in reducing the taxpayer's invested capital for the calendar year 1917 in the amount of $602,820.96 alleged to represent depletion sustained in prior years.

(n) The Commissioner of Internal Revenue erred in reducing the taxpayer's invested capital for the calendar year 1917 in the amount of $1,638,611.21 alleged to represent excess valuation of property.

5. The facts upon which the taxpayer relies in support of its appeal are as follows:

[28] (a) During 1923 the taxpayer filed an income and profits tax waiver for the year 1917, dated January 9, 1923. This waiver expired in accordance with Mim. 3085, Cumulative Bulletin II–1, page 74, on April 1, 1924. Subsequently on December 10th, 1924, the taxpayer filed a waiver covering the year 1917 which provided in part as follows:

> "This waiver is in effect from the date it is signed by the taxpayer, and will remain in effect for a period of one year after the expiration of the statutory period of limitation within which assessments of taxes may be made for the year or years mentioned, or the statutory period of limitation as extended by Section 277 (b) of the Revenue Act of 1924, or by any waivers already on file with the Bureau."

Under the terms of the last-mentioned waiver, the period of limitation expired April 1, 1925. The deficiency letter herein involved, bears on its face the date, September 28th, 1925.

(b) During the calendar year 1917, the taxpayer paid the sum of $8,000 to the Oil Industry Association. The Oil Industry Association was an organization created and maintained for the purpose of supplying the oil industry with statistics and

other general information bearing on that industry. This association was not operated for profit. It was dependent upon amounts paid it by various oil companies to whom it supplied information.

[29] (c) The Commissioner of Internal Revenue erroneously disallowed as a deduction the amount paid by the taxpayer to the Oil Industry Association on the ground that it constituted a donation. The amount paid was in nowise a donation. It was paid for services rendered by the Oil Industry Association and constituted an ordinary and necessary business expense.

(d) During the year 1917 certain of the oil derricks located on taxpayer's producing lands were damaged or destroyed by fire. In the repair and replacement of these oil derricks, the taxpayer necessarily expended during 1917, $5,271.50. This amount was deducted by the taxpayer in determining its 1917 taxable income as an ordinary and necessary business expense incurred in the maintenance and operation of producing wells.

(e) The Commissioner of Internal Revenue erroneously disallowed the deduction of $5,271.50 in determining the taxpayer's 1917 income on the ground that this represented a capital expenditure. The Commissioner then erroneously deducted from the taxpayer's 1917 income $1,646.19 alleged to represent the depreciated cost of the oil derricks [30] damaged or destroyed by fire during 1917. The amount of $1,646.19 did not represent actual depreciated cost but depreciated cost as estimated by the Commissioner.

(f) On January 1, 1916, the taxpayer entered into a contract with Charles S. Wheeler and John F. Bowie, attorneys at law, of San Francisco, California, by the terms of which the attorneys agreed to defend for the taxpayer a suit in which the United States sought to cancel all right, title and interest of the taxpayer to Section 2, T. 32 S., R. 23 E., M. D. M., Kern County, California. By the terms of the contract, if the attorneys were successful in defending this suit, they became absolute owners of four per cent of all the oil in Section 2. This contract ran with the land and was binding upon the taxpayer and all subsequent owners thereof.

(g) The attorneys named were successful in defending the taxpayer's title to said Section 2. In accordance with the terms of said contract, the attorneys received during the year 1917, $20,441.18, representing four per cent of all the oil recovered during that year from said Section 2. This portion of the oil recovered during that year was the absolute property of the attorneys. The taxpayer had no right, title or interest in said oil.

[31] (h) The Commissioner of Internal Revenue erroneously added $20,441.18 representing four per cent of the oil recovered from said Section 2 during 1917, to the taxpayer's income for that year. The Commissioner of Internal Revenue should have valued the said contract on January 1, 1916, and have capitalized the value thereof as of that date and added said value to the cost to the taxpayer of said Section 2.

(i) During the year 1917, the taxpayer expended $5,765.94 in the purchase and installation of gas pumping engines, sucker rods, small receiving tanks, well casing and tubing. The Commissioner of Internal Revenue erroneously disallowed this deduction and required the taxpayer to capitalize said $5,765.04.

(j) The gas pumping engines in question were used for the purpose of operating the pumps which drew the oil from the wells. These engines were operated continuously twenty-four hours a day, were exposed to the action of the elements, and in no event had a useful life in excess of one year.

The sucker rods are jointed rods inserted in the well tubing to which is attached the pump which draws the oil from the ground. These rods operate continuously twenty-four hours a day and are subject [32] to great wear and tear and do not have a useful life in excess of one year.

The small oil receiving tanks are small tanks of fifty to one hundred barrel capacity. They are of thin gauge sheet metal construction and have a useful life of not more than one year.

The well casing is composed of a number of joints inserted in the drill hole. The replacement of well casing joints in producing wells is a maintenance charge and constitutes an ordinary and necessary business expense. Tubing is placed inside the casing. The pump and sucker rods operate inside the tubing. The tubing is subject to great wear and tear due to the action of the pump and sucker rods and does not have a useful life in excess of one year.

(k) In determining the taxpayer's depletion on its property for the year 1917, the Commissioner allowed a deduction of $101,368.87. Of this amount $57,451.33 was allowed on Section 2, T. 32 S., R. 23 E., Kern County, California. The balance $43,917.54 represents depletion allowed on Section 16, T. 32 S., R. 23 E. The Commissioner should have allowed as depletion on said Section 16, $93,892.18 on the basis of the March 1, 1913, value thereof.

(l) During the year 1914, the taxpayer sold certain oil properties in Section 4, T. 11 N., R. 23 W., S. B. M., Kern County, California. Payment [33] was to be made thereafter in oil as produced. The taxpayer determined in 1914 its profit from this transaction, which was duly reported to its stockholders and taken into its books of account.

(m) On January 1, 1917, there was still due to the taxpayer on said contract, $33,882.51. In determining the taxpayer's invested capital for 1917, the Commissioner deducted the amount stated above. This amount, $33,882.51 should have been included in the taxpayer's invested capital for all years subsequent to 1914, including the year 1917, as the profit was actually realized during the year 1914.

(n) In determining the taxpayer's invested capital for 1917, the Commissioner reduced the invested capital as shown by its books by the amount of $602,820.96 alleged to represent depletion sustained in prior years. Inasmuch as depletion has been held not to be a charge against capital, this reduction was erroneous.

(o) Prior to February 10, 1910, the date of

the organization of this taxpayer as a corporation, the Louis Titus Pool, a syndicate, and the Hartford Oil Company, a corporation, began the acquisition of certain oil properties located in Sections 16, 22 and 26 in T. 32 S., R. 23 E., M. D. M., Kern County, California. No oil was being produced on these [34] properties at the time of their acquisition by the syndicate and the Hartford Oil Company. During the latter part of 1909 and up to February 10, 1910, the syndicate and the corporation developed these properties and brought in several producing wells.

(p) On February 10, 1910, the Louis Titus Pool and the Hartford Oil Company sold all their properties in the sections above named to this taxpayer in exchange for this taxpayer's bonds of the par value of $825,000.00 and this taxpayer's stock of the par value of $8,250,000.00. Subsequently, May 27th, 1912, based upon numerous sales to outside investors of taxpayer's stock, the par value of the stock was reduced, and twenty shares of the par value of $1.00 each were issued in exchange for each former share of the par value of $100.00 The properties acquired by the taxpayer on February 10, 1910, were thereupon carried on the taxpayer's books at their cost on the basis of bonds of the par value of $825,000.00 and stock of the par value of $1,650,000 issued therefor. The properties acquired by the taxpayer February 10, 1910, were worth at the date of acquisition and on March 1, 1913, and January 1, 1914, not less than the par of the securities issued therefor.

(q) The Commissioner of Internal Revenue in computing the taxpayer's invested capital for the [35] calendar year 1917 erroneously reduced the taxpayer's invested capital for that year in the amount of $1,638,611.21 alleged to represent "excess valuation of property." The properties in question were worth in February 10, 1910, March 1, 1913, and January 1, 1914, not less than the value at which they were carried on said taxpayer's books. The taxpayer's assets were worth during the calendar year 1917 not less than the amount at which they were carried on the taxpayer's books.

6. The taxpayer in support of this appeal relies upon the following propositions of law:

(a) Section 277 (a) of the Revenue Act of 1924 provides for the assessment and collection of all taxes under the Revenue Act of 1917 as amended, within five years after the return was filed.

(b) Section 12 of the Revenue Act of 1916, as amended, provides for the deduction in determining net income of all ordinary and necessary expenses incurred and paid during the taxable year.

(c) Sections 5 and 12 of the Revenue Act of 1915, as amended, and Article 170 of Regulations 33 issued under said Revenue Act of 1916, as amended, provide for a reasonable deduction for depletion of oil properties based on the March 1, 1913, value.

[36] (d) Section 207 of the Revenue Act of 1917 provides for the inclusion in invested capital of the value as of January 1, 1914, of property paid in for stock.

(e) The Court of Claims in the case of Ludey vs. The United States held that depletion of oil properties was not a charge or depletion of capital.

WHEREFORE, this taxpayer respectfully prays that this Board may hear and determine its appeal.

CHARLES D. HAMEL,
RICHARD S. DOYLE,
L. DANA LATHAM,
Attorneys for Taxpayer.

[37] District of Columbia,
City of Washington,—ss.

Frank Evans, being first duly sworn, deposes and says that he is the Secretary of the North American Oil Consolidated, the taxpayer named in the foregoing amended petition, and is duly authorized to verify the same; that he has read the said petition and that the facts stated therein are true.

(Signed) FRANK EVANS.

Subscribed and sworn to before me this 5th day of November, A. D. 1925.

[Seal] (Sgd.) MAMIE CAROLYN GILES,
Notary Public, D. C.

Now, November 6, 1930, the foregoing amended petition certified from the record as a true copy.

[Seal] B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[38] Filed Jan. 5, 1926. United States Board of Tax Appeals.

United States Board of Tax Appeals.

DOCKET No. 8714.

Appeal of NORTH AMERICAN OIL CONSOLIDATED, San Francisco, California.

ANSWER.

The Commissioner of Internal Revenue, by his attorney, A. W. Gregg, solicitor of Internal Revenue, for answer to the petition of the above-named taxpayer, admits, avers and denies as follows:

(1) Admits the allegations contained in paragraphs numbered 1, 2 and 3 of the taxpayer's petition and avers that the deficiency letter was mailed to the taxpayer on September 28, 1925.

(2) Admits that the taxpayer has filed three waivers for the year 1917 and denies that the tax liability of this taxpayer for the year 1917 is barred by any statute of limitations.

(3) Admits that the taxpayer paid the sum of $8,000.00 to the Oil Industry Association in 1917 but denies that the said payment was other than a donation or that it may be allowed as a deduction from gross income.

(4) Admits that certain of the taxpayer's oil derricks were damaged by fire in 1917 but denies that the loss sustained thereon exceeded the sum of $1,646.19 as allowed by the Commissioner.

(5) Admits that the cost of rebuilding and re-

placing certain oil derricks damaged by fire was the sum of $5,271.50 but denies that this amount constituted an allowable deduction from gross income or other than a capital expenditure.

[39] (6) Admits that the taxpayer paid approximately $20,441.18 during the year 1917 to its attorneys for defending or perfecting title to certain oil property but denies that this constituted a deductible expense or was other than a capital expenditure.

(7) Admits that the taxpayer purchased certain gas-engines, steel oil tanks and oil well casing and tubing during the year 1917 for the sum of $5,765.94, but denies that this equipment has a physical or useful life of less than one year or that this amount may be allowed as a deduction from gross income for the year 1917.

(8) Denies that the taxpayer is entitled to a deduction for depletion of its oil properties in the sum of $151,343.51, or any amount in excess of $101,368.87, based upon the fair market value of such property at March 1, 1913, and upon cost for that property subsequently acquired.

(9) Denies that the taxpayer did not realize a profit of $33,882.51 in 1917 on the sale of certain oil property or that this amount constituted invested capital for the year 1917.

(10) Admits that the Commissioner reduced the taxpayer's invested capital, by sustained depletion on oil properties in the sum of $602,820.96, but denies that depletion was not sustained or that in-

vested capital has been improperly reduced by this amount.

(11) Admits that the Commissioner reduced the taxpayer's invested capital by $1,638,611.21, but denies that the properties acquired for stock and bonds had an actual cash value in excess of the amount allowed by the Commissioner.

[40] (12). Denies, generally and specifically, each and every allegation of the petition not hereinbefore admitted, qualified or denied.

PROPOSITIONS OF LAW.

(1) All proper deductions from gross income have been allowed this taxpayer as provided by Section 12 of the Revenue Act of 1917.

(2) The invested capital of this taxpayer has been correctly computed in accordance with the provisions of Section 207 of the Revenue Act of 1917.

WHEREFORE, it is prayed that the appeal be denied.

A. W. GREGG,
Solicitor of Internal Revenue,
Attorney for Commissioner of Internal Revenue.

Of Counsel:
BENJ. H. SAUNDERS,
Special Attorney,
Bureau of Internal Revenue.

Now, November 6, 1930, the foregoing answer certified from the record as a true copy.

[Seal] B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[41] Filed Jan. 29, 1927. United States Board of Tax Appeals.

United States Board of Tax Appeals.

DOCKET No. 8714.

NORTH AMERICAN OIL CONSOLIDATED,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

AMENDED ANSWER TO AMENDED PETITION.

The Commissioner of Internal Revenue, by his attorney, A. W. Gregg, General Counsel, Bureau of Internal Revenue, for amended answer to the amended petition of the above-named taxpayer, admits, alleges and denies as follows:

(1) Admits the allegations contained in paragraphs numbered 1, 2 and 3 of the taxpayer's amended petition; and alleges that the deficiency letter was mailed to the taxpayer on September 28, 1925.

(2) Denies that the tax liability of the petitioner for the year 1917 is barred by the statute of limitations, as alleged in paragraphs 4 (a) and 5 (a) of the amended petition, and alleges the taxpayer filed a waiver November 17, 1925, waiving the time prescribed by law for making an assessment for the year 1917 until December 31, 1926.

(3) Admits the taxpayer paid the sum of $8,000.00 to the Oil Industry Association in 1917, but denies that said payment was other than a donation or that it may be allowed as a deduction from gross income.

(4) Admits that certain of the taxpayer's oil derricks were damaged by fire in 1917, but denies that the loss sustained thereon exceeded the sum of $1,646.19, as allowed by the Commissioner.

(5) Admits that the cost of rebuilding and replacing certain oil derricks damaged by fire was the sum of $5,271.50, but denies that this amount constituted an allowable deduction from gross income or other than a capital expenditure.

[42] (6) (a) Admits the taxpayer was engaged during the years 1916 and 1917 in a suit with the United States in which the United States sought to cancel all right, title, and interest of the taxpayer to Section 2, Township 32 South, Range 23 East, M.D.M. Kern County, California.

(b) Admits the taxpayer was successful in said suit against the United States.

(c) Admits that $20,441.18 represents approximately four per cent of all the oil recovered during the year 1917 from said section.

(d) Admits the taxpayer paid approximately $20,441.18 during the year 1917 to its attorneys for defending or perfecting title to certain oil property but denies that this constituted a deductible expense or was other than a capital expenditure.

(7) Alleges that during the litigation between the petitioner and the United States in the years

1916 and 1917, the oil revenue from said Section 2, Township 32 South, Range 23 East, M. D. M., was impounded, and that at the termination of the litigation in 1917 in favor of the taxpayer, the oil revenue accrued during the period of litigation was released to the taxpayer.

(8) Alleges further that the oil revenues for the year 1916 from said parcel which was impounded in the year 1916 and released to the taxpayer in 1917 was the sum of $253,150.96.

(9) Alleges that the Commissioner erred by failing to include in the taxpayer's income for the year 1917 the said sum of $253,150.96 received by the taxpayer in 1917.

(10) Admits that the taxpayer purchased certain gas-engines, steel oil tanks and oil-well casing and tubing during the year 1917 for the sum of $5,765.94, but denies that this equipment has a physical or useful life of less than one [43] year or that this amount may be allowed as a deduction from gross income for the year 1917.

(11) Denies that the taxpayer is entitled to a deduction for depletion of its oil properties in the sum of $151,343.51, or any amount in excess of $101,368.87 based upon the fair market value of such property at March 1, 1913 and upon cost for that property subsequently acquired.

(12) Denies that the taxpayer did not realize a profit of $33,882.51 in 1917 on the sale of certain oil property or that this amount constituted invested capital for the year 1917.

(13) Admits the Commissioner reduced the taxpayer's invested capital by sustained depletion on

oil properties in the sum of $602,820.96, but denies that depletion was not sustained or that invested capital has been improperly reduced by this amount.

(14) Admits that the Commissioner reduced the taxpayer's invested capital by $1,638,611.21 but denies that the properties acquired for stock and bonds had an actual cash value as of the date of acquisition, March 1, 1913, or January 1, 1914, in excess of the amount allowed by the Commissioner.

(15) Denies all allegations of the petition not hereinbefore expressly admitted or denied.

WHEREFORE, it is prayed that the appeal be denied and that the deficiency for the year 1917 as set forth in deficiency letter dated September 29, 1925, be increased by adding to corrected net income for said year, as shown in said letter, the sum of $253,150.96 and the tax liability computed thereon.

A. W. GREGG,
General Counsel,
Bureau of Internal Revenue.

Of Counsel:

A. GEORGE BOUCHARD,
Special Attorney,
Bureau of Internal Revenue.

Now, November 6, 1930, the foregoing amended answer to amended petition certified from the record as a true copy.

[Seal] B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[44] Filed April 4, 1927.

United States Board of Tax Appeals.

DOCKET No. 8714.

NORTH AMERICAN OIL CONSOLIDATED,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

AMENDMENTS TO AMENDED PETITION.

The above-named petitioner by its counsel hereby amends its amended petition heretofore filed in the above cause by adding thereto but without waiving or abandoning any part thereof, the following assignment of errors and statement of facts:

4 (u) The Commissioner of Internal Revenue erred in adding to the petitioner's taxable income for the calendar year 1917 the sum of $32,293.47 alleged to represent a profit realized in 1917 on a 1914 contingent sale which sale had in fact been consummated in 1914 and the profit therefrom determined during that year.

5. The facts upon which the petitioner relies as the basis for the foregoing assignment of errors are as follows:

[45] (r) On December 17, 1914, petitioner entered into a contract for the sale of interest in Section 4, Township 11 North, Range 23 West, S. B. B. & M., Kern County, California, to the Miocene Oil Company. Petitioner was to be paid for said inter-

est in said section, the sum of $60,000 by retaining title to one-third of the net oil produced on said premises until the petitioner should receive the net sum of $60,000, said Miocene Oil Company being required to store said one-third of said net oil produced for 30 days or market the same and collect the proceeds thereof, without charge for said services to the petitioner. The petitioner considered the transaction as closed in 1914 and it was reflected on petitioner's books in said year as a closed transaction. In 1917 oil was discovered on said section and a part of the balance due on said contract was paid to the petitioner during said year. The total amount paid never exceeded the fair market value of said interest of petitioner in said section, either at the time the said interest was acquired by the petitioner in 1914 or at the time of the discovery in 1917. The respondent erroneously included the sum of $32,293.40 in the petitioner's net income for 1917 as a part of the alleged profit on said transaction.

CHARLES D. HAMEL,
RICHARD S. DOYLE,
LEE I. PARKS,
Attorneys for Petitioner,
906 Southern Building, Washington, D. C.

[46] City of Washington,
District of Columbia,—ss.

Charles D. Hamel, being duly sworn, deposes and says that he is one of the attorneys for the petitioner herein and that the facts stated in the foregoing amendments to the amended petition are true to the best of his knowledge and belief.

CHARLES D. HAMEL.

Subscribed and sworn to before me this 1st day of April, 1927.

MAMIE CAROLYN GILES,
Notary Public.

Now, November 6, 1930, the foregoing amendments to amended petition certified from the record as a true copy.

[Seal] B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

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[47] Filed at Hearing May 2, 1927.

United States Board of Tax Appeals.

DOCKET No. 8714.

NORTH AMERICAN OIL CONSOLIDATED,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

AMENDMENT TO AMENDED ANSWER TO AMENDED PETITION.

The Commissioner of Internal Revenue by his attorney A. W. Gregg, General Counsel, Bureau of Internal Revenue, for amendment to amended answer to amended petition of the above-named taxpayer, alleges as follows:

That the respondent erred in determining petitioner's invested capital and depletion allowance for the year 1917 by adding to the capital sum re-

maining in the year 1916 the sum of $287,687.03 representing the capitalized cost of well development on Section 16, Township 32 South, Range 23 East during the year 1916, whereas in truth and in fact said sum was expende in drilling wells during the years 1910 and 1911 as follows: $51,727.64 in the year 1910 and $235,959.39 in the year 1911; that said sum of $287,687.03 should have been added to the capital sum during the years 1910 and 1911 instead of during the year 1916; that petitioner's invested capital for the year 1917 as shown in deficiency letter dated September 28, 1925, should be decreased in the sum of $131,930.22 and that the depletion allowance for the year 1917 as shown in said deficiency letter should be reduced by the sum of $11,224.00.

A. W. GREGG,
General Counsel,
Bureau of Internal Revenue.

Of Counsel:

A. GEORGE BOUCHARD,
Special Attorney,
Bureau of Internal Revenue.

Now, November 6, 1930, the foregoing amendment to amended answer to amended petition certified from the record as a true copy.

[Seal] B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[48] Filed May 18, 1926.

United States Board of Tax Appeals.

DOCKET No. 16,107.

NORTH AMERICAN OIL CONSOLIDATED,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION.

The above-named petitioner hereby petitions for a re-determination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, IT:CA:PYA-5-4-60D, dated April 9, 1926, and as a basis of its proceeding alleges as follows:

I.

The petitioner is a California corporation with its principal office and place of business at 915 Balfour Building, San Francisco, California.

II.

The notice of deficiency (copy of which is attached and marked Exhibit "A") purports to have been mailed to the petitioner on April 9, 1926.

III.

The taxes in controversy are income and profits taxes for the calendar years 1918 and 1919, and for $121,325.69.

[49] IV.

The determination of tax set forth in said notice of deficiency is based upon the following errors:

(a) The Commissioner of Internal Revenue erred in failing and refusing to permit the petitioner to deduct, in computing its taxable income for the year 1918, the sum of $7,096.41 paid by the petitioner for the repair of oil derricks damaged by fire.

(b) The Commissioner of Internal Revenue erred in requiring the petitioner to capitalize the sum of $7,096.41 expended by it during the year 1918 in repairing oil derricks damaged by fire.

(c) The Commissioner of Internal Revenue erred in adding to the petitioner's taxable income for the year 1918, the sum of $17,598.00, expended by the petitioner as an ordinary and necessary business expense in the purchase and installation of gasoline engines used in operating the pumps in the petitioner's various oil-wells.

(d) The Commissioner of Internal Revenue erred in capitalizing the sum of $17,598.00 expended by the petitioner during the year 1918 for the acquisition and installation of gasoline engines used in operating the pumps in the petitioner's various oil-wells.

(e) The Commissioner of Internal Revenue erred in adding to the petitioner's taxable income for the year 1919, [50] the sum of $5,049.28 expended by the petitioner as an ordinary and necessary business expense in the purchase and installation of gasoline engines used in operating the pumps in the petitioner's various oil-wells.

(f) The Commissioner of Internal Revenue erred in capitalizing the sum of $5,049.28 expended by the petitioner during the year 1919 for the acquisition and installation of gasoline engines used in operating the pumps in the petitioner's various oil-wells.

(g) The Commissioner of Internal Revenue erred in adding to the petitioner's taxable income for the year 1918, the sum of $1,589.04 alleged to represent a profit realized in 1918 on a 1914 contingent sale, which sale had, in fact, been consummated in 1914 and the profit therefrom determined during that year.

(h) The Commissioner of Internal Revenue erred in failing and refusing to permit a deduction by the petitioner for depletion sustained during the year 1918 on oil properties located in Section 16, T. 32 S., R. 23 E., M. D. M., in Kern County, California, in the amount of $69,206.19.

(i) The Commissioner of Internal Revenue erred in limiting the petitioner's deduction for depletion for the year 1918 of petitioner's oil properties on said Section 16, T. 32 S., R. 23 E., M. D. M. in Kern County, California, to $32,583.31.

[51] (j) The Commissioner of Internal Revenue erred in failing and refusing to permit a deduction by the petitioner in 1919 for depletion sustained during said year on oil properties located in Section 16, T. 32 S., R. 23 E., M. D. M. in Kern County, California, in the amount of $66,952.30.

(k) The Commissioner of Internal Revenue erred in limiting the petitioner's deduction for de-

pletion for the year 1919 of petitioner's oil properties on said Section 16, T. 32 S., R. 23 E., M. D. M. to $31,763.12.

(l) The Commissioner of Internal Revenue erred in reducing the petitioner's invested capital for the calendar year 1918 in the amount of $707,819.73, alleged to represent depletion sustained in prior years.

(m) The Commissioner of Internal Revenue erred in reducing the petitioner's invested capital for the calendar year 1919 in the amount of $819,751.89, alleged to represent depletion sustained in prior years.

(n) The Commissioner of Internal Revenue erred in reducing the petitioner's invested capital for the calendar year 1918 in the amount of $65,274.34, alleged to represent additional taxes for the year 1917 as prorated over the calendar year 1918.

(o) The Commissioner of Internal Revenue erred in reducing the petitioner's invested capital for the calendar [52] year 1919 in the amount of $33,217.57, alleged to represent additional taxes for the calendar year 1918 as prorated over the year 1919.

(p) The Commissioner of Internal Revenue erred in reducing the petitioner's invested capital for the calendar year 1919 in the amount of $109,239,61, alleged to represent additional taxes for the calendar year 1917.

(q) The Commissioner of Internal Revenue erred in reducing the petitioner's invested capital in the amount of $1,589.04 alleged to represent a profit realized in 1918 on a 1914 contingent sale, which sale

had been fully consummated in 1914 and the profit therefrom determined during that year.

(r) The Commissioner of Internal Revenue erred in reducing the petitioner's invested capital for the calendar year 1918 in the amount of $1,646.19, alleged to represent a fire loss in 1917.

(s) The Commissioner of Internal Revenue erred in reducing the petitioner's invested capital for the calendar year 1919 in the amount of $5,146.19, alleged to represent fire losses for the years 1917 and 1918.

(t) The Commissioner of Internal Revenue erred in reducing the petitioner's invested capital for each of the years 1918 and 1919 in the amount of $1,638,611.21 alleged to represent excess valuation of property.

[53] The facts upon which the petitioner relies as the basis of its proceeding are as follows:

(a) During the year 1918, certain of the oil derricks located on the petitioner's producing lands were damaged or destroyed by fire. In the repair and replacement of these oil derricks, the petitioner necessarily expended during the year 1918, the sum of $7,096.41. This amount was deducted by the petitioner in determining its 1918 taxable income as an ordinary and necessary business expense incurred in the maintenance and operation of producing wells.

(b) The Commissioner of Internal Revenue erroneously disallowed the deduction of $7,096.41 in determining the petitioner's 1918 income on the ground that it represented a capital expenditure. The Commissioner then erroneously deducted from

the petitioner's 1918 income the sum of $3,500.00, alleged to represent the depreciated cost of the oil derricks damaged or destroyed by fire during 1918. The amount of $3,500.00 did not represent actual depreciated cost, but depreciated cost as estimated by the Commissioner.

(c) During the years 1918 and 1919, the petitioner expended certain amounts in the purchase and installation of gasoline engines. The amount expended for 1918 was $17,598.00, and for 1919, $5,049.28. The Commissioner erroneously disallowed a deduction in each of the respective years for said amounts, alleging that they represented capital [54] expenditures rather than ordinary and necessary business expense. Said engines were used for the purpose of operating the pumps which drew oil from the petitioner's wells. These engines were operated continuously twenty-four hours a day; were constantly exposed to the action of the elements and in no event had a useful life in excess of one year.

(d) During the year 1914, the petitioner sold certain oil properties in Section 4, T. 11 N., R. 22 W., S. B. M., in Kern County, California. Payment therefor was to be made in oil as produced. The petitioner determined in 1914 its profits from this transaction, which were duly reported to its stockholders and taken into its books of account.

(e) On January 1, 1918, there was still due to the petitioner on said contract, the sum of $1,589.04. The Commissioner erroneously included said amount in the petitioner's taxable income for the

calendar year 1918, and erroneously excluded it from the petitioner's invested capital for said year. This amount should have been included in the petitioner's invested capital for all years subsequent to 1914, including the year 1918, as the profit was actually realized during the year 1914.

(f) In determining the petitioner's depletion on its properties for the calendar year 1918, the Commissioner allowed a deduction of $183,392.56. Of this amount, [55] $150,809.25 was allowed on Section 2, T. 32 S., R. 23 E., M. D. M. in Kern County, California. The balance, $32,583.31, represented depletion allowed on Section 16, T. 32 S., R. 23 E., M. D. M. The Commissioner should have allowed as depletion for 1918 on said Section 16, T. 32 S., R. 23 E., M. D. M., $69,206.19 on the basis of the March 1, 1913 value thereof.

(g) In determining the petitioner's depletion of its properties for the calendar year 1919, the Commissioner allowed a deduction of $260,929.22. Of this amount, $229,166.10 was allowed on Section 2, T. 32 S., R. 23 E., M. D. M., in Kern County, California. The balance, $31,763.12 represents depletion allowed on Section 16, T. 23 S., R. 23 E., M. D. M. The Commissioner should have allowed as depletion for 1919 on said Section 16, T. 32 S., R. 23 E. $66,952.30 on the basis of the March 1, 1913 value thereof.

(h) In determining the petitioner's invested capital for each of said years, the Commissioner of Internal Revenue has reduced invested capital as shown by the petitioner's books by the amount of $707,819.73 in 1918, and $819,751.89 in 1919, al-

leged to represent depletion sustained in prior years. Inasmuch as depletion has been held not to be a charge against capital, these reductions were erroneous.

[56] (i) The Commissioner has reduced invested capital for the year 1918 by the amount of $65,274.35, alleged to represent additional income and profits taxes for 1917 prorated. No portion of the alleged additional taxes for 1917 were ever due and the reduction of the 1918 invested capital by said amount was erroneous.

(j) The Commissioner of Internal Revenue has reduced the invested capital for 1919 by the amount of $43,422.44 alleged to represent additional taxes for 1918 prorated. No portion of the alleged additional taxes for 1918 were ever due and the reduction of the 1919 invested capital by said amount was erroneous.

(k) The Commissioner of Internal Revenue has reduced the invested capital for 1919 by the amount of $109,239.81, alleged to represent additional taxes for the year 1917. Reduction of invested capital in 1919 on account of said alleged additional taxes was erroneous.

(l) Prior to February 10, 1910, the date of the organization of this petitioner as a corporation, the Louis Titus Pool, a syndicate, and the Hartford Oil Company, a corporation, begun the acquisition of certain oil properties located in Sections 16, 22 and 26 in T. 32 S., R. 23 E., M. D. M. in Kern County, California. No oil was being produced on these properties at the time of their ac-

quisition by the syndicate and the Hartford Oil Company. During the latter part of 1909, and up to February 10, 1910, [57] the syndicate and the corporation developed these properties and brought in several producing wells.

(m) On February 10, 1910, the Louis Titus Pool and the Hartford Oil Company sold all their properties in the above-described sections to this petitioner in exchange for this petitioner's bonds of the par value of $825,000.00, and this petitioner's stock of the par value of $8,250,000.00. Subsequently, on May 27, 1912, based upon numerous sales to outside investors in petitioner's stock, the par value of the stock was reduced, and twenty shares of the par value of $1.00 each were issued in exchange for each former share of the par value of $100.00. The properties acquired by the petitioner on February 10, 1910, were thereupon carried on the petitioner's books at their cost on the basis of bonds of the par value of $825,000.00 and stock of the par value of $1,650,000.00 issued therefor. The properties acquired by the petitioner February 10, 1910, were worth at the date of acquisition and on March 1, 1913, not less than the par value of the securities issued therefor.

(n) The Commissioner of Internal Revenue, in computing the petitioner's invested capital for each of the calendar years 1918 and 1919 erroneously reduced the petitioner's invested capital for each of said years in the amount of $1,638,611.21 alleged to represent "excess valuation of property." The properties in question were worth on February 10,

1910, and March 1, 1913, not less [58] than the value at which they were carried on said petitioner's books. The petitioner's assets were worth during each of the calendar years in question not less than the amount at which they were carried on the petitioner's books.

VI.

The petitioner prays for relief from the deficiency asserted by the respondent on the following and each of the following particulars:

(a) That the Board may find that the petitioner should be allowed as a deduction from gross income for the calendar year 1918, the sum of $7,096.41 paid during said year by the petitioner for the repair of oil derricks damaged by fire.

(b) That the Board may find that the petitioner should be allowed as a deduction from gross income for the calendar year 1918, the sum of $17,598.00 expended during the said year by the petitioner as an ordinary and necessary business expense in the purchase and installation of gasoline engines for use in operating pumps in the petitioner's various oil-wells.

(c) That the Board may find that the petitioner should be allowed as a deduction from gross income for the calendar year 1919, the sum of $5,049.28 expended during said year by the petitioner as an ordinary and necessary business expense [59] in the purchase and installation of gasoline engines for use in operating pumps in the petitioner's various oil-wells.

(d) That the Board may find that the final pay-

ment received in 1918 on the 1914 sale of properties in Section 4, T. 11 N., R. 23 W. S. B. M., in the amount of $1,589.04 should not be included in the petitioner's gross income for said year.

(e) That the Board may find that the petitioner should be allowed as a deduction from gross income for the calendar year 1918, the sum of $69,206.19 for depletion of the petitioner's oil properties located on Section 16, T. 32 S., R. 23 E. M. D. M. in Kern County, California, based on the March, 1913 value thereof.

(f) That the Board may find that the petitioner should be allowed as a deduction from gross income for the calendar year 1919, the sum of $66,952.30 for depletion of the petitioner's oil properties located on Section 16, T. 32 S., R. 23 E. M. D. in Kern County, California, based on the March 1, 1913 value thereof.

(g) That the Board may find that the petitioner's invested capital for said years should not be reduced by the depletion sustained in prior years.

(h) That the Board may find that the amount of the final payment received in 1918 on the 1914 sale should [60] not be excluded from the petitioner's invested capital for said year.

(i) That the Board may find that the petitioner's invested capital for the years 1918 and 1919 should not be reduced on account of alleged fire losses in prior years.

(j) That the Board may find that the petitioner's invested capital for each of said years

should include the actual cash value of the property paid in at the time of incorporation as set up on petitioner's books of account.

WHEREFORE, the petitioner respectfully prays that the Board may hear and determine its appeal, and the petitioner further prays that the Board may give and grant the petitioner such other and further relief as in the premises the Board may deem fit and proper, and if the Board shall find that the petitioner has overpaid its taxes for the years under review, the Board may order and direct a refund of said taxes overpaid with interest thereon.

CHARLES D. HAMEL,
RICHARD S. DOYLE,
LEE I. PARK,
Attorneys for Petitioner,
906 Southern Building, Washington, D. C.

[61] State of California,
City and County of San Francisco.

Frank Evans, being first duly sworn, on oath deposes and says, that he is the secretary of the North American Oil Consolidated, the petitioner named in the foregoing petition, and is duly authorized to verify said petition; that he has read said petition and that the facts stated therein are true.

FRANK EVANS.

Subscribed and sworn to before me this 11th day of May, 1926.

[Seal] L. P. LOVELAND,
Notary Public in and for City and County of San Francisco, State of California.

[62] TREASURY DEPARTMENT,
Washington, D. C.

IT:CA:PYA-5-4-60D. April 9, 1926.

North American Oil Consolidated,
544 Market Street,
San Francisco, California.

Sirs:—

The determination of your income and profits tax liability for the years 1918 and 1919, as shown in office letter dated September 29, 1925, has been reconsidered in connection with an examination of the books of account and conference held in the Unit February 20, 1926, and a deficiency in tax in the amount of $121,325.69 has been disclosed in accordance with the enclosed statement.

In accordance with the provisions of Section 274 of the Revenue Act of 1926, you are allowed 60 days from the date of mailing of this letter within which to file a petition for the redetermination of this deficiency. Any such petition must be addressed to the United States Board of Tax Appeals, Earle Building, Washington, D. C., and must be mailed in time to reach the Board within the 60-day period, not counting Sunday as the sixtieth day.

Where a taxpayer has been given an opportunity to file a petition with the United States Board of

Tax Appeals and has not done so within the 60 days prescribed and an assessment has been made, or where a taxpayer has filed a petition and an assessment in accordance with the final decision on such petition has been made, the unpaid amount of the assessment must be paid upon notice and demand from the Collector of Internal Revenue. No claim for abatement can be entertained.

If you acquiesce in this determination and do not desire to file a petition with the United States Board of Tax Appeals, you are requested to execute a waiver of your right to file a petition with the United States Board of Tax Appeals on the enclosed Form A, and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:CA:PYA-5-4-60D. In the event that you acquiesce in a part of the determination, the waiver should be executed with respect to the items to which you agree.

Respectfully,

D. H. BLAIR,
Commissioner.

Enclosures:
Statement,
Waiver—Form A.

[63] (Mailed April 9, 1926.)

STATEMENT.

IT:CA:PYA-5-4-60D.

In re: NORTH AMERICAN OIL CONSOLIDATED,
544 Market Street,
San Francisco, California.

	Deficiency in Tax.
1918	$ 62,228.66
1919	59,097.03
Total	$121,325.69

1918.

Net Income.

Net income reported in return		$138,451.73
Add:		
1. Interest receivable accrued	$ 3,750.00	
2. Donations disallowed	38.00	
3. Income tax accrued	5,952.36	
4. Excessive depreciation disallowed	29,532.09	
5. Wells rebuilt	7,096.41	
6. Capital expenditures (engines)	17,598.00	
7. Contingent profit realized	1,589.04	
8. Drilling tools and machinery sold	6,516.10	72,072.00
Total		$210,523.73

Deduct:		
9. Fire loss not charged off	$ 3,500.00	
10. Additional depletion allowed	15,877.08	
11. Taxes paid not distributed	6,193.34	25,570.42
Corrected net income		$184,953.31

Explanation of Adjustments to Net Income.

1. Interest receivable accrued has been added to income under Article 87 of Regulations 45.

2. Donations have been disallowed under Article 562 of Regulations 45.

3. Income tax accrued has been disallowed as a deduction under Article 131 of Regulations 45.

leb:3.

[64] North American Oil Consolidated.

4. Excessive depreciation has been computed as follows: Depreciation claimed $42,223.61, less depreciation allowed, $12,691.52, equals $29,532.09.

5. Wells rebuilt—cost of rebuilding has been disallowed as a deduction under Article 24 of Regulations 45.

6. Capital expenditures for engines have been disallowed under Article 24 of Regulations 45.

7. Contingent profit on 1914 sale, realized in 1918, has been added to income.

8. Drilling tools and machinery sold and proceeds credited to asset account have been restored to income.

9. Fire loss not charged off has been allowed as

a deduction from income under Article 141 of Regulations 45.

10. Additional depletion allowed has been computed as follows: Depletion allowed $183,392.56, less depletion claimed, $167,515.48, equals $15,877.08.

11. Taxes paid but not distributed on books have been deducted from income.

Invested Capital.

Capital stock and surplus as shown by the balance sheets as at December 31, 1917			$2,045,874.66
Add:			
1.	Paid in surplus account stock sales	$50,000.00	
2.	Organization expense	20,000.00	
3.	Burned wells rebuilt	5,271.50	
4.	Capital expenditures, (Casing, tubing, etc.)	5,765.95	
5.	Depreciation charged off	720,475.24	
6.	Depletion charged off	459,566.29	1,261,078.97
Total			$3,306,953.63
Deduct:			
7.	Income tax prorated, 1917	$65,274.35	
8.	Tax withheld at source.	64.20	
9.	Fire loss not charged off, 1917	1,646.19	
10.	Contingent profit realized, 1918	1,589.04	

11. Depreciation allowed, prior years	307,412.95	
12. Depletion allowed, prior years	707,819.73	
13. Excess valuation of property	1,638,611.21	2,722,417.67
Adjusted invested capital ..		$ 584,535.96

leb:3

[65] North American Oil Consolidated.

Explanation of Adjustments to Invested Capital.

1. Paid in surplus (or appreciation of Section 16) has been allowed as recommended in Valuation Report dated July 30, 1925.

2. Organization expense charged off in 1910 has been restored to asset account.

3. Burned wells rebuilt disallowed as expense have been restored to asset account.

4. Capital expenditures (Casing, tubing, etc.) disallowed as expense have been restored to asset account.

5. Depreciation charged off has been restored account the corrected amount as shown under Item 11.

6. Depletion charged off has been restored for the reason that the corrected amount is shown under Item 12.

7. 1917 income tax $119,125.68 has been prorated and deducted under Article 845 of Regulations 45.

8. Tax withheld at source on bond interest,

being a liability, has been deducted from invested capital.

9. Fire loss not charged off has been allowed for 1917, and deducted from invested capital.

10. Contingent profit on 1914 sale realized in 1918 has been deducted from invested capital.

11. Depreciation allowed for prior years has been deducted from invested capital.

12. Excess valuation of property paid in for stock and bonds has been deducted from invested capital.

Computation of Tax—1918.

Excess profits tax	$64,373.27
12% income tax	14,229.60
Total tax assessable	$78,602.87
Original tax assessed	16,374.21
Deficiency in tax	$62,228.66

leb 3.

[66] North American Oil Consolidated.

1919.

Net Income.

Net Income reported in return		$223,287.05
Add:		
1. Donations disallowed	112.00	
2. Excessive depletion disallowed	$64,058.06	
3. Capital expenditures (engines)	5,049.28	

4. Drilling tools and machinery sold	3,627.55	72,846.89
Total		$296,133.94
Deduct:		
5. Additional depreciation	$ 1,262.19	
6. Income tax accrued, error	139.68	1,401.87
Corrected net income		29 732.07

Explanation of Adjustments to Net I me:

1. Donations have been disallowed as a deduction under Article 562 of Regulations 45.

2. Excessive depletion has been computed as follows: Depletion claimed $324,987.28, less depletion allowed $260,929.22, equals $68,058.06.

3. Capital expenditures for engines have been disallowed under Article 24 of Regulations 45.

4. Drilling tools and machinery sold, same as Income, Item 8, for 1918.

5. Additional depreciation has been computed as follows: Depreciation allowed $9,769.49, less depreciation claimed on return, $8,507.30, equals $1,262.19.

6. Income taxes accrued per Schedule N, $20,879.90 less amount actually accrued on books, $20,740.22, equals $139.68, error in accrual.

Invested Capital.

Capital stock and surplus shown by the balance sheets as at December 31, 1918	$2,181,883.05

leb:3.

[67] North American Oil Consolidated.

Forward		$2,181,883.05
Add:		
1. Paid in surplus (stock sales in 1910)	$50,000.00	
2. Burned wells rebuilt, 1917 and 1918	12,367.91	
3. Organization expense, restored	20,000.00	
4. Drilling tools and machinery restored	6,516.10	
5. Capital expenditures prior years	23,363.94	
6. Depreciation charged off	762,698.85	
7. Depletion charged off	627,081.77	1,502,028.57
Total		$3,683,911.62
Deduct:		
8. 1918 income tax prorated	$33,217.57	
9. Additional tax for 1917	109,239.61	
10. Fire losses for 1917 and 1918	5,146.19	
11. Income tax not charged, 1918	4,205.81	
12. Depreciation allowed	320,104.47	
13. Depletion sustained	19,751.89	
14. Excess value of property	1,638,611.21	2,930,276.75
Adjusted invested capital		$ 753,634.87

Explanation of Adjustments to Invested Capital.

1. Paid in surplus same as Invested Capital, Item (1) for 1918.

2. Burned wells rebuilt in 1917 and 1918, disallowed as expense for those years, have been restored.

3. Organization expense charged off in 1910, has been restored to asset account.

4. Drilling tools and machinery sold and credited to the asset account have been restored.

5. Capital expenditures for prior years disallowed as deductions from income have been restored to asset account under Article 24 of Regulations 45.

6. Depreciation charged off has been restored for the reason that the correct amount is shown under Item 12.

7. Depletion charged off has been restored for the reason that the correct amount is shown under Item 13.

8. 1918 income tax, $78,602.87, has been prorated and deducted under Article 845 of Regulations 45.

leb:3.

[68] North American Oil Consolidated.

9. Additional income tax for 1917 has been deducted under Article 131, of Regulations 45.

10. Fire losses for 1917 and 1918 not charged on books, having been allowed as deductions from income, have been deducted from invested capital.

11. Income tax paid in 1918, not distributed on the books, has been deducted from invested capital.

12. Depreciation allowed for prior years, same as invested capital, Item 11, for 1918.

13. Depletion sustained for prior years, same as invested capital, Item 12, for 1918.

14. Excess valuation of property paid in for stocks and bonds, same as invested capital, Item 13, for 1918.

Computation of Tax—1919.

Excess profits tax	$75,089.28
10% income tax	21,764.28
Total tax assessable	$96,853.56
Original tax assessed	37,756.53
Deficiency in tax	$59,097.03

leb 3.

[69] Depreciation Schedule.

Property.	1910.	1911.	1912.	1913.	1914.
20% assets	$ 37,983.99	$ 59,668.13	$ 49,723.45	$ 44,648.61	$ 44,881.96
40% assets	31,010.95	26,477.39	15,113.42	26,068.60	18,724.71
F. W. and Section 14				13,552.74	2,599.40
Totals	$ 68,994.94	$ 86,145.52	$ 64,836.87	$ 84,269.95	$ 66,206.07
F. W. and Section 14				4,589.55	8,899.60
Section 22	43,031.83	91,961.53	70,456.36	49,901.92	41,656.50
Section 26	19,603.09	47,377.16	51,187.94	46,815.66	34,086.33
Grand Total	$131,629.86	$225,484.21	$186,481.17	$185,577.08	$150,848.50
Accumulated Total	13,629.86	357,114.07	843,595.24	729,172.32	880,020.82

Property.	1915.	1916.	1917.	1918.	1919.
20% assets	$ 23,917.22	$ 15,801.94	$ 12,496.47	$ 9,665.42	$ 7,714.59
40% assets	9,396.35	5,061.99	1,420.97	3,026.10	2,054.90
Totals	$ 33,313.57	$ 20,863.93	$ 13,917.44	$ 12,691.52	$ 9,769.49
F. W. and					
Section 14					
Section 22					
Section 26	$ 23,830.09				
Grand Total	$ 57,143.66	$ 20,863.93	$ 13,917.44	$ 12,691.52	$ 9,769.49
Accumulated Total	$937,164.48	$958,028.41	$307,412.95	$320,104.47	$329,873.90
Accumulated total on property sold and abandoned		664,532.90			
Accumulated depreciation revised		$293,495.51	$307,412.95	$320,104.47	$329,837.90

Your claim for the credit of $5,929.70, part of the tax assessed for 1918, will be rejected in a schedule to be approved by the Commissioner.

The information contained in the returns, claim for credit and revenue agent's report, has been carefully considered in determining the tax liability as set forth herein.

Payment of the deficiency in tax should not be made until a bill is received from the Collector of Internal Revenue for your district and remittance should then be made to him.

Now, November 6, 1930, the foregoing petition certified from the record as a true copy.

[Seal] B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

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[70] Filed Jun. 24, 1926. United States Board of Tax Appeals.

United States Board of Tax Appeals.

DOCKET No. 16,107.

NORTH AMERICAN OIL CONSOLIDATED,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ANSWER.

The Commissioner of Internal Revenue, by his attorney, A. W. Gregg, General Counsel, Bureau of Internal Revenue, for answer to the petition of the

above-named taxpayer, admits and denies as follows:

(1) Admits the allegations contained in paragraph 1 of the petition.

(2) Admits the allegations contained in paragraph 2 of the petition.

(3) Admits the allegations contained in paragraph 3 of the petition.

(4) (a) Admits that certain of taxpayer's oil derricks were damaged by fire in 1918 and that the cost of repairing and replacing them was $7,095.41, but denies that this amount constitutes an allowable deduction from gross income for said year.

(b) Admits that the taxpayer purchased certain gasoline engines during 1918 for the sum of $17,598.00 and purchased other gasoline engines in 1919 for the sum of $5,049.28, and admits that respondent disallowed a deduction of the respective amounts in each of the aforesaid years on the ground that they represented capital expenditures rather than ordinary and necessary business expenses, but denies that this was error.

(c) Admits that respondent added to petitioner's taxable income for the year 1918 the sum of $1,589.04, which sum represents a contingent profit realized in 1918, but denies that this was error.

(d) Denies that the taxpayer is entitled to a deduction for depletion on its oil properties in the year 1918 in any amount in excess of $183,392.56 as allowed by the Commissioner.

[71] Re: Appeal of North American Oil Consolidated, No. 16,107.

(e) Denies that the taxpayer is entitled to a deduction for depletion on its oil properties in 1919 in any amount in excess of $260,929.22 as allowed by the Commissioner.

(f) Admits that the Commissioner reduced petitioner's invested capital in 1918 by the sum of $707,819.73 and for 1919 in the sum of $819,751.89, but denies that this was error.

(g) Admits that the Commissioner reduced taxpayer's invested capital for 1918 in the amount of $65,274.34, which sum represents additional income and profits taxes for 1917, prorated, but denies that this was error.

(h) Admits that Commissioner reduced petitioner's invested capital for the calendar year 1919 in the sum of $33,217.50, which sum represents 1918 income taxes prorated over the year 1919, but denies that this was error.

(i) Admits that Commissioner reduced petitioner's invested capital for the calendar year 1919 in the amount of $109,239.61, which sum represents additional taxes for the calendar year 1917, but denies that this was error.

(j) Admits that Commissioner reduced petitioner's invested capital in the amount of $1,589.04, which sum represents the profit realized in 1918 on a contingent sale, but denies that this was error.

(k) Admits that Commissioner reduced petitioner's invested capital for the calendar year 1918 in the amount of $1,646.19, which sum represents a fire loss in 1917, but denies that this was error.

(l) Admits that Commissioner reduced petitioner's invested capital rfo the calendar year 1918 in

the amount of $5,146.19, which sum represents fire losses for 1917 and 1918, but denies that this was error.

(m) Admits that Commissioner reduced petitioner's invested capital for each of the years 1918 and 1919 by the sum of $1,638,611.21, but denies

[72] Re: Appeal of North American Oil Consolidated, No. 16,107.

that the properties acquired for stock and bonds had an actual cash value in excess of the amount allowed by the Commissioner.

(5) Denies all allegations of the petition not hereinbefore specifically admitted or denied.

WHEREFORE, it is prayed that the appeal be denied.

A. W. GREGG,
General Counsel,
Bureau of Internal Revenue.

A. GEORGE BOUCHARD,
Special Attorney,
Bureau of Internal Revenue.

Now, November 6, 1930, the foregoing answer certified from the record as a true copy.

[Seal] B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

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[73] Filed Jan. 25, 1927. United States Board of Tax Appeals.

United States Board of Tax Appeals.

DOCKET No. 16,107.

NORTH AMERICAN OIL CONSOLIDATED,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

AMENDED ANSWER.

The Commissioner of Internal Revenue, by his attorney, A. W. Gregg, General Counsel, Bureau of Internal Revenue, for amended answer to the petition of the above-named taxpayer, admits and denies as follows:

(1) Admits the allegations contained in paragraph 1 of the petition.

(2) Admits the allegations contained in paragraph 2 of the petition.

(3) Admits the allegations contained in paragraph 3 of the petition.

(4) (a) Admits that certain of taxpayer's oil derricks were damaged by fire in 1918 and that the cost of repairing and replacing them was $7,095.41, but denies that this amount constitutes an allowable deduction from gross income for said year.

(b) Admits that the taxpayer purchased certain gasoline engines during 1918 for the sum of $17,598.00 and purchased other gasoline engines in 1919 for the sum of $5,049.28, and admits that respondent disallowed a deduction of the respective amounts

in each of the aforesaid years on the ground that they represented capital expenditures rather than ordinary and necessary business expenses, but denies that this was error.

(c) Admits that respondent added to petitioner's taxable income for the year 1918 the sum of $1,589.04, which sum represents a contingent profit realized in 1918, but denies that this was error.

[74] Re: North American Oil Consolidated, No. 16,107.

(d) Denies that for the years 1918 and 1919 the petitioner is entitled to deductions from income on account of depletion of oil properties located in Section 16, Township 32 South, Range 23 East, M. D. M., Kern County, California, in excess of the amounts allowed by the Commissioner.

(e) Admits the Commissioner allowed depletion deductions on account of depletion of oil wells located on Section 2, Township 32, Range 23 East, M. D. M., Kern County, California, as alleged in paragraph 5(f) and 5(g) of the petition.

(f) Alleges the Commissioner erred in allowing depletion deductions based upon discovery value of oil wells located on Section 2, Township 32 South, Range 23 East, M. D. M., Kern County, California.

(g) Admits that the Commissioner reduced petitioner's invested capital in 1918 by the sum of $707,819.73 and for 1919 in the sum of $819,751.89, but denies that this was error.

(h) Admits that the Commissioner reduced taxpayer's invested capital for 1918 in the amount of $65,274.34, which sum represents additional income

and profits taxes for 1917, prorated, but denies that this was error.

(i) Admits that the Commissioner reduced petitioner's invested capital for the calendar year 1919 in the sum of $33,217.50, which sum represents 1918 income taxes prorated over the year 1919, but denies that this was error.

(j) Admits that the Commissioner reduced petitioner's invested capital for the calendar year 1919 in the amount of $109,239.61, which sum represents additional taxes for the calendar year 1917, but denies that this was error.

(k) Admits that the Commissioner reduced petitioner's invested capital in the amount of $1,589.04, which sum represents the profit realized in 1918 on a contingent sale, but denies that this was error.

[75] Re: North American Oil Consolidated, No. 16,107.

(l) Admits that the Commissioner reduced petitioner's invested capital for the calendar year 1918 in the amount of $1,646.19, which sum represents a fire loss in 1917, but denies that this was error.

(m) Admits that the Commissioner reduced petitioner's invested capital for the calendar year 1919 in the sum of $5,146.19, which sum represents fire losses for 1917 and 1918, but denies that this was error.

(n) Admits that the Commissioner reduced petitioner's invested capital for each of the years 1918 and 1919 by the sum of $1,633,611.21 but denies that the properties acquired for stock and bonds had an actual cash value in excess of the amount allowed by the Commissioner.

(o) Alleges that the Commissioner erred in the determination of the petitioner's net income for the year 1918 by allowing as a deduction from income the sum of $21,730.60 paid to attorneys for legal services in perfecting the taxpayer's title to a portion of its properties, and alleges that said sum so paid was a capital expenditure.

(p) Alleges the Commissioner erred in the determination of the petitioner's net income for the year 1919 by allowing as a deduction from income the sum of $35,795.54 paid to attorneys for legal services in perfecting the taxpayer's title to a portion of its properties, and alleges that said sum so paid was a capital expenditure.

(5) Denies all allegations of the petition not hereinbefore expressly admitted or denied.

WHEREFORE, it is prayed that the appeal be denied, and that the deficiencies for the years 1918 and 1919 as set forth in deficiency letter dated April 9, 1926, be increased respectively.

A. W. GREGG,
General Counsel,
Bureau of Internal Revenue.

A. GEORGE BOUCHARD,
Special Attorney,
Bureau of Internal Revenue.

Now, November 6, 1930, the foregoing amended answer certified from the record as a true copy.

[Seal] B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[76] Filed at Hearing May 2, 1927.

United States Board of Tax Appeals.

DOCKET No. 16,107.

NORTH AMERICAN OIL CONSOLIDATED,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

AMENDMENT TO AMENDED ANSWER.

The Commissioner of Internal Revenue, by his attorney, A. W. Gregg, General Counsel, Bureau of Internal Revenue, for amendment to amended answer to petition of the above-named taxpayer, alleges as follows:

That respondent erred in determining petitioner's invested capital and depletion deductions for the years 1918 and 1919 by adding to capital sum remaining in 1916 the sum of $287,687.03 representing the capitalized cost of well development on Section 16, Township 32 South, Range 23 East, during the year 1916, whereas in truth and in fact said sum was expended in drilling wells during the years 1910 and 1911 as follows: $51,727.64 in the year 1910 and $235,959.39 in the year 1911; that said sum of $287,687.03 should have been added to the capital sum during the years 1910 and 1911 instead of the year 1916; that petitioner's invested capital for the year 1918 as shown in deficiency letter dated April

9, 1926, should be decreased in the sum of $120,706.22 and that the depletion allowance for the year 1918 as shown in said letter should be reduced by the sum of $8,285.60; that petitioner's invested capital for the year 1919 as shown in said deficiency letter should be decreased in the sum of $112,420.62 and depletion allowance for the year 1919 as shown in said letter should be reduced by the sum of $8,029.67.

A. W. GREGG,
General Counsel,
Bureau of Internal Revenue.

Of Counsel:
A. GEORGE BOUCHARD,
Special Attorney,
Bureau of Internal Revenue.

Now, November 6, 1930, the foregoing amendment to amended answer certified from the record as a true copy.

[Seal] B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

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[77] A true copy.

[Seal] Teste: B. D. GAMBLE,
Clerk U. S. Board of Tax Appeals.

United States Board of Tax Appeals.

DOCKET Nos. 8714 and 16,107.

Promulgated May 24, 1928.

NORTH AMERICAN OIL CONSOLIDATED,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Assessment and collection of taxes for 1917 held not barred by statute of limitations.

Deduction claimed for an amount paid Oil Industry Association disallowed for lack of evidence.

Cost of replacing derricks damaged by fire held not deductible as expense.

Portion of proceeds of oil paid attorneys for legal services in defending title to property and securing land patents, held to be capital expenditures. Further held that depletion is allowable in each year in amounts equal to the sums paid to the attorneys.

Respondent sustained in disallowing deductions claimed on account of expenditures in 1918 and 1919 for gasoline engines.

Value of petitioner's land holdings in one section for invested capital and depletion purposes determined; and quantity of oil reserves for depletion purposes determined.

Respondent sustained in reduction of invested capital on account of fire losses, depletion, and taxes for prior years, subject to correction of amounts to reflect changes effected by this decision.

Income in 1916 impounded by court order and released to petitioner in 1917 held not taxable to petitioner in 1917.

Capital expenditures made in 1910 and 1911 should be reduced to reflect depletion before inclusion in capital sum remaining in 1916 for purposes of computing invested capital and depletion for 1917 and subsequent years.

CHARLES D. HAMEL, Esq., and LEE I. PARK, Esq., for the Petitioner.

A. GEORGE BOUCHARD, Esq., for the Respondent.

[78] In this proceeding the petitioner seeks a redetermination of the income and profits taxes for the years 1917, 1918 and 1919, for which the Commissioner has determined deficiencies of $109,239.61, $62,228.66 and $59,097.03, respectively.

The petitioner alleges error on the part of the Commissioner:

(1) In proposing an additional tax for the year 1917, after the assessment and collection of such tax was barred by the statute of limitations provided by section 250(d) of the Revenue Act of 1921 and section 277 of the Revenue Act of 1924.

(2) In disallowing as a deduction in 1917 $8,000 paid to the Oil Industry Association.

(3) In disallowing as deductions amounts spent for the repair and replacement of oil derricks dam-

aged by fire as follows: 1917, $5,271.50; 1918, $7,096.41.

(4) In including in taxable income for 1917 $20,441.18, representing four per cent of the oil recovered during the year from Section 2, and paid to the petitioner's attorneys for legal services in defending title to property.

(5) In disallowing as expense for the year 1917 $5,765.94 spent for gas pumping engines, sucker rods, small receiving oil tanks, well casing and tubing, and for the year 1918, $17,598 and for the year 1919 $5,049.28 expended for gasoline engines used in operating the pumps at the various oil-wells.

(6) In determining inadequate amounts as depletion deductions for 1917, 1918 and 1919 on account of oil extracted during such years from Section 16, Township 32 South, Range 23 East. This issue involves the determination of the value of the oil deposit in Section 16 at March 1, 1913.

[79] (7) In reducing invested capital for 1917 in an amount of $33,882.51 and in 1918 in an amount of $1,589.04, representing profits realized in 1917 and 1918 on a 1914 contingent sale.

(8) In reducing invested capital for 1918 in an amount of $1,646.19 and for 1919 in an amount of $5,146.19, representing fire losses in 1917 and 1918, respectively.

(9) In reducing invested capital on account of depletion sustained during prior years by the following amounts: 1917, $602,820.96; 1918, $707,819.73; 1919, $819,751.89.

(10) In reducing invested capital for 1918 in

an amount of $65,274.34 and for 1919 in an amount of $33,217.57, representing additional taxes for the previous year, pro rated over the taxable year.

(11) In reducing invested capital in all years by $1,638,611.21, representing excess valuation of property. This issue involves the determination of the value of property acquired for stock and bonds on February 10, 1910, and August 25, 1910.

The Commissioner, in his answers to the various petitions and amendments thereto, alleges affirmatively:

(a) That he erred in failing to exclude as taxable income in 1917 an amount of $253,150.96 received by the petitioner in that year, representing the revenue derived from Section 2, Township 32 South, Range 23 East, which amount was impounded during the litigation between the petitioner and the United States in 1916 and 1917 and released in 1917.

(b) That he erred in determining invested capital and depletion allowance for 1917 by adding to the capital sum remaining in 1916 the amount of $287,687.03, representing the cost of well development on Section 16, during 1916, whereas this amount was expended as follows: 1910, [80] $51,727.64; 1911, $235,959.39; that the additions to capital should have been made in 1910 and 1911 in the amounts thus expended instead of 1916; that the invested capital for 1917 as shown in deficiency letter dated September 28, 1925, should be decreased by $131,930.22, and that the depletion allowance for 1917 as shown by said deficiency letter should be reduced by $11,224.00, that the invested capital for

1918 and 1919 as shown by the deficiency letter of April 9, 1926, should be decreased by $120,706.22 and $112,420.62, respectively, and that the depletion allowances for 1918 and 1919 as shown by said letter should be reduced by $8,285.60 and $8,029.67, respectively.

(c) That he erred in allowing depletion deductions in 1918 and 1919 based upon discovery value of oil-wells located in Section 2, Township 32 South, Range 23 East.

(d) That he erred in allowing as a deduction for 1918 $21,730.60 and for 1919 $35,795.45 paid to attorneys for legal services in perfecting title to a portion of the petitioner's property and alleges that the sums paid were capital expenditures.

At the hearing the petitioner conceded and abandoned issue number (7) and the respondent conceded and abandoned his affirmatve allegation designated issue (c).

FINDINGS OF FACT.

The petitioner is a corporation organized in 1910 under the laws of the State of California with principal office at 915 Balfour Building, San Francisco, California.

On February 10, 1910, the petitioner acquired from Louis Titus in exchange for 82,500 shares of capital stock of a par value of $8,250,000 and $825,000 face value of bonds, certain properties in accordance with a resolution adopted by the directors in a meeting of February 10, 1910. [81] The portions of the resolution dealing with the lands involved in this proceeding were as follows:

WHEREAS, Louis Titus has offered to sell and to convey to this corporation, free and clear of all encumbrances, the following lands situate, lying and being in the County of Kern, State of California, described as follows, to wit:

North half of Northeast quarter of Southeast quarter (N.½ of NE.¼ of SW.¼), South half of Southwest quarter (S.½ of SW.¼) of Section Sixteen (16);

* * * * * * * * * *

and to sell and convey to this corporation all his interest in the following lands, situate in the County of Kern, State of California, described as follows, to wit:

The South half of Southeast quarter (S.½ of SE.¼); Northwest quarter of Southeast quarter (NW.¼ of SE.¼); South half of Northeast quarter (S.½ of NE.¼ of Southeast quarter (SE.¼); South half of Southwest quarter of Northeast quarter (S.½ of SW.¼ of NE.¼); South five (5) acres of North half of Southwest quarter of Northeast quarter (N.½ of SW.¼ of NE.¼); North half of Southwest quarter (N.½ of SW.¼), of Section Sixteen (16);

* * * * * * * * *

East half of Northeast quarter (E.½ of NE.¼); Northwest quarter of Northeast quarter (NW.¼ of NE.¼); North fifteen (15) acres of North half of Southwest quarter of

Northeast quarter (N.½ of SW.¼ of NE.¼), in Section Sixteen (16);

* * * * * * * * *

All in Township Thirty-two (32) South, Range Twenty-three (23) East, Mount Diablo Base and Meridian; and to sell to this corporation all personal property and equipment now upon and used in connection with, or in the operation of, said lands or leases, or any part thereof; all in consideration of the issuance to said Louis Titus of Eighty-two Thousand Five Hundred (82,500) shares of the capital stock of this corporation, fully paid up, and the delivery to him of First Mortgage Six Per Cent Gold Bonds of this corporation aggregating Eight Hundred and Twenty-five Thousand ($825,000) Dollars, in par value of said bonds, which bonds are to be secured by a First Mortgage on the lands and leases so conveyed by said Louis Titus; and in further consideration of the assumption by this corporation of all obligations of the leases so offered to be assigned, and of the assumption by this corporation of liability for all unpaid bills incurred for labor or material used upon any of said lands or leases, and in further consideration of the assumption by this corporation of all bills and obligations of Hartford Oil Company, a corporation, which bills and obligations have heretofore been assumed by said Louis Titus.

[82] Part of the obligations assumed by the petitioner represented the balance of the purchase

price still owing upon certain of the lands described above.

On August 25, 1910, the petitioner purchased the fee to 135 acres in the Northeast quarter (NE.¼) of Section Sixteen (16), of which land the petitioner was lessee, in accordance with a resolution adopted in a meeting of the Board of Directors on August 10, 1910, which reads as follows:

> RESOLVED, that this corporation purchase from Lockwood Company, a corporation, all the right, title and interest now owned or claimed by said Lockwood Company in or to the Northeast quarter and the South half of Section 16, in Township 32 South, Range 23 East, M. D. B. and M., including the remainder in fee owned by said company in about one hundred and thirty-five (135) acres in the Northeast quarter of said Section, a claim to an interest in fee in a triangular piece of land along the southerly boundary of the Southeast quarter of said Section, and an undivided one-half interest in two strips of land along the Southerly and Westerly boundary lines of the Southwest quarter of said Section and that with said lands, this corporation purchase a release from any and all obligations to said Lockwood Company incurred by it under all leases of lands of which this company is lessee in said Section 16, and also purchase a release of all its obligations of every kind now owned or held by or owing to said Lockwood Company, except the promissory note of this cor-

poration, dated May 17, 1910, for the sum of $38,116.25, and that in consideration of the transfer of said interests in land and of the release of said obligations by said Lockwood Company to this corporation, this corporation pay to said Lockwood Company the sum of $2,244.50 and deliver to said Lockwood Company bonds of this corporation aggregating $200,000 in face value thereof, and also issue and deliver to said Lockwood Company 2000 shares of the capital stock of this corporation.

On March 1, 1909, Louis Titus, acting on behalf of the Hartford Oil Company, one of the predecessors of the petitioner, acquired from the Lockwood Company an option to purchase for $180,000 the West ½ of the SE.¼, containing about 80 acres of land; the NE.¼ of the SE.¼, containing about 40 acres of land; the S.½ of the S.½ of the NE.¼, containing about 40 acres of land, all in Section 16, Township 32 South, Range [83] 23 East, M. D. B. & M. By the same agreement, Titus also acquired for the Hartford Oil Company an option to lease from the Lockwood Company the N.½ of the NE.¼, containing about 80 acres, and the N.½ of the S.½ of the NE.¼, containing about 40 acres, all in Section 16, Township 32 South, Range 23 East, M. D. B. & M.

On June 1, 1909, the option of March 1, 1909, was exercised by Titus, acting on behalf of the Hartford Oil Company.

On July 20, 1909, the Hartford Oil Company ac-

quired the SE.¼ of the SE.¼ of Section 16, Township 32 South, Range 23 East.

On November 27, 1909, the contract of March 1, 1909, was revised in the following particulars:

> Whereas, the parties now desire to modify said agreement, it is now therefore agreed, that there shall be released from said agreement of sale, the following described property, to wit:
>
> "The North half (½) of the Northeast quarter (¼) of the Southeast quarter (¼) of said Section, and also the South half (½) of the Southeast quarter (¼) of the Northeast quarter (¼) of said Section";
>
> and said land shall not be purchased by the party of the second part, but shall be retained by the party of the first part. The purchase price of the entire one hundred and sixty (160) acres agreed to be purchased, shall be reduced at the rate of Eleven hundred and twenty-five ($1,125.00) dollars per acre for each acre above released from said contract.
>
> It is further agreed, that the party of the first part will sell to the party of the second part, and the party of the second part will buy from the party of the first part, the North half (½) of the Southwest quarter (¼) of said Section Sixteen (16), and pay therefor the sum of Eleven hundred and twenty-five ($1,125.00) dollars per acre. The party of the second part will also buy from the party of the first part a strip of land along the South side of and being a portion of the North

half (½) of the Southwest quarter (¼) of the Northeast quarter (¼) of said Section, which strip of land shall be sufficient in width to contain five (5) acres of land and shall include the present well and buildings now understood to be upon said five (5) acres. If, upon a survey, it should be determined that a wider strip of [84] land is needed in order to include said well, and said buildings, then said strip of land shall be wide enough in any event to include said well and said buildings, and the party of the second part will pay therefor at the rate of eleven hundred and twenty-five ($1,125.00) dollars per acre.

It is further understood and agreed, that the lease now held by the party of the second part upon the One hundred and twenty (120) acres of land in said Section, shall be cancelled and annulled, but that the party of the second part shall receive from the party of the first part a lease upon the West half (½) of the Northeast quarter (¼) of said Section, save and except such portions of said land as have heretofore or herein agreed to be sold to said second party. Said lease shall be upon the terms and conditions of said original lease for said One hundred and twenty (120) acres, save and except that the party of the second part shall be required to keep in operation only one string of tools on said property, and shall be allowed Ninety (90) days from date in which to commence operation upon the first well on

said lease, and the party of the second part shall not be required to drill more than One (1) well to each four (4) acres of said leased land.

It is further understood and agreed that inasmuch as there is an apparent shortage in said Section, that all payments and settlements under this and the previous agreement between the parties hereto, shall be adjusted according to the Buffington Survey, it being understood, however, that in the event that the party of the first part can, within two (2) years from the date hereof, deliver the full amount of land called for in said contracts, or any land in addition to the Buffington Survey, and can make up said shortage by adding to the Southerly line of the Southeast quarter (¼) of said Section, and/or adding to the Westerly line of the North half (½) of the Southwest quarter (¼) of said section, that then, and in that event, the party of the second part shall be bound to accept said additional acreage and pay therefor at the rate of Eleven Hundred and Twenty-five ($1,125.00) Dollars per acre.

It is further understood that all sums due under this and the previous contract between the parties hereto shall be paid at the rate of Ten Thousand ($10,000) Dollars on December 1, 1909, and the balance at the rate of Five Thousand ($5,000) Dollars per month, payable on the first day of each and every month until the entire sum is paid, and that deferred pay-

ments shall bear interest at the rate of Six per cent (6%) per annum, payable monthly, said interest to begin for the additional land purchased under this contract on the first day of December, 1909."

On February 3, 1910, Louis Titus, acting on behalf of the Louis Titus Pool, leased from the Lockwood Company the E.½ of the NE.¼, the NW.¼ of the NE.¼ and the North 15 acres more or less of the N.½ of the SW.¼ [85] of the NE.¼. The lessor retained one-fifth of all money received from the sale of oil.

On February 4, 1910, Louis Titus, acting on behalf of the Louis Titus Pool, purchased from the Lockwood Company the N.½ of the NE.¼ of the SE.¼ of Section 16, Township Thirty-two South, Range 23 East, M. D. B. & M., containing twenty (20) acres of land, more or less, for $30,000.

The record does not show the date of purchase of the S.½ of the SW.¼ of Section 16, Township 32 South, Range 23 East, M. D. B. & M. It was, however, turned over to the petitioner on February 10, 1910, and the petitioner does not contend that it was acquired by the Hartford Oil Company prior to that date. It was acquired at a total cost of $78,480.00. The oil possibilities in a portion of it at that time were doubtful.

The costs of the lands in Section 16, Township 32 South, Range 23 East, which were acquired by the petitioner on February 10, 1910, to the predecessors of the petitioner were as follows:

	Cost.
Hartford Oil Co., Fee SE.¼ of SE.¼	$ 42,000.00
Hartford Oil Co., Fee N.½ of SW.¼ W.½ of SE.¼; S.½ of NE.¼ of SE.¼; S.½ of SW.¼ of NE.¼; 5.5 acres of N.½ of SW.¼ of NE.¼	205,616.25
Hartford Oil Co., Lease S.½ of SW.¼	10,000.00
Louis Titus Pool, Fee S.½ of SW.¼	68,480.00
Louis Titus Pool, Fee N.½ of NE.¼ of SE.¼	30,000.00
Louis Titus, Lease, N.½ of NE.¼; N.½ of SE.¼ of NE.¼; 15 acres of N.½ of SE.¼ of NE.¼	Nothing
Total	$356,096.25

The petitioner did not acquire a small area in the northwest corner of the SW.¼, nor a small area in the southwest corner of the SW.¼ of Section 16.

[86] At the time Section 16 was acquired by the petitioner, the geological structure of the district had been worked out and the existence of oil-bearing sands established. It was apparent that an anticlinical axis crossed the southwestern portion of Section 16, and extended for several miles northwest and southeast. From a geological point of view Section 16 was favorably situated for the accumulation of oil in the underlying sands. The development northwest and southeast of Section 16 established that there existed in those sections a zone or streak in the sands which contained a lighter and more valuable oil than was found to the southwest in the foothills. Persons interested in the field generally believed that this streak or zone

extended from the middle of Section 30, Township 32, Range 24, southeastward into the Maricopa District and northwestward across Sections 14, 10, 15, the northeast portion of 16, 9, portions of 5, and Section 6 in Township 32, Range 23, and thence northwest across Section 31, Township 31, Range 23, and Sections 24, 25 and 36 of Township 31, Range 22. Several wells were drilled in this zone, of the highly productive type called "gushers," which resulted in naming this zone the "gusher zone."

Prior to February, 1910, a few wells had been drilled on Section 16. Four wells were drilled in the SW.¼. These wells struck oil but the production from them, if there was any at all, was inconsequential. These wells appeared to represent the southwest margin of profitable development and indicated that the prospect of striking oil in the southwest quarter was rather doubtful. One well was drilled southwest of the center of the Northeast ¼, which showed lots of oil but so much water was mixed with the oil that there was no commercial production. Two wells were drilled in the SE.¼. Well No. 2 produced about 100 bbls. a day and Well No. 3 about 200 bbls. a day. These wells were near the west line in the SW.¼ of the SE.¼.

[87] A number of wells had been drilled in the NE.¼ of Section 17, and in Sections 8, 22, 23 and 26, which encountered the oil-bearing sands between sea level and an elevation of 500 feet above sea level. A large part of Section 16 shows the oil-bearing sands at the same elevation. A well

was drilled in the center of Section 9, Township 32, Range 23, in October, 1909, by the C. C. M. O. Company. A "showing" of oil only resulted. This well encountered the oil sand at about 600 feet below sea level.

A well was drilled in the southwest corner of the northwest ¼ of Section 15, known as the Jade, encountering the sand some 300 feet below sea level. A well was drilled in the SW.¼ of Section 14, known as the Bedrock, encountering the sand about 800 feet below sea level. In September, 1909, the Standard Oil Company brought in a good well in Section 14, Township 32, Range 23, encountering the sand about 1200 feet below sea level.

In November, 1909, the St. Lawrence Oil Company drilled a well in the southwest corner of the SE.¼ of Section 5, Township 32, Range 23, that produced about 500 bbls. a day, encountering the oil sands approximately at sea level.

In November, 1909, the C. C. M. O. Company drilled a well in Section 6, Township 32, Range 23, which produced 1,000 barrels a day. At the well the oil sand was encountered at approximately 500 feet above sea level.

Other wells drilled prior to February 10, 1910, were as follows:

Date	Description.	Designation.	Remarks.
April 1909	Sec. 7, T. 12, R. 25	Lady Washington	Showing of oil
July 1909	Sec. 10, T. 32, R. 24		Gasser
Oct. 1909	Sec. 14, T. 31, R. 22	Bear Creek	Considerable heavy oil
1909	Sec. 30, T. 32, R. 24	Standard Oil	Showing of oil
Nov. 1909	Sec. 36, T. 12, R. 24	Wellman	Large well
Jan. 1910	Sec. 35, T. 32, R. 23	Hamilton #1	Commercial producer
June 1909	Sec. 31, T. 31, R. 23	Crandall #1	Large producer
Sept. 1909	Sec. 31, T. 31, R. 23	Crandall #2	Production
Oct. 1909	Sec. 31, T. 31, R. 23	#2 Midway Crude	406 bbls. a day

[88] At this time it was known that numerous anticlines, and cynclines had resulted from the folding of the oil sands, causing many abrupt changes in the dip of the sands, within short distances. The Spellacy Hill anticline extended from Section 18, Township 32, Range 23 southeast to Section 32, Township 32, Range 24, and possibly further. Another anticline was located crossing the southwestern portion of Section 6, Township 32, Range 23, and extending into Township 31, Range 22 and a third was located from Section 35, Township 32, Range 23, southeast to Section 11, Township 11 North, Range 24 West. These were all minor folds in the McKittrick formation which as a whole was tilted to the northeast.

In March, 1910, the Lakeview gusher came in on Section 25, Township 12, Range 24, and produced from 40,000 to 70,000 barrels a day. This well encountered the oil sands at approximately 1400 feet below sea level.

In May, 1910, the Regal #1 gusher came in on the NW.¼, Section 14, Township 32, Range 23. This well encountered the oil sands at a depth of approximately 1300 feet.

In May, 1910, a 6,000 barrel well came in on Section 30, Township 31, Range 23. This well encountered the oil sands at a depth of more than 1100 feet below sea level.

Between February 10, 1910, and March 1, 1913, three wells were drilled in the northeast quarter of Section 16. Well number 67, located in the northwest corner produced 100 barrels a day and well

number 71, in the northeast corner produced about 50 barrels a day. Well No. 67 was considered a profitable well. About eleven wells were drilled in the SW.¼, of which two were water wells, and one, Number 34, produced on an average 300 barrels a day, and sixteen wells were drilled on the SE.¼, one of which was a water well. The wells which were abandoned prior to March 1, 1913, were Nos. 1, 4, 5, 47 and 48, in the SW.¼, Nos. 4, 7 and 19 in the SE.¼.

[89] At Well No. 71 the oil sand is shown to be approximately 700 feet below sea level and at Well No. 67 approximately 300 feet below sea level.

At March 1, 1913, numerous wells had been drilled within the so-called "gusher zone" between Section 30, Township 32, Range 24 and Section 31, Township 31, Range 23. Between Well No. 2 of Section 6, Township 32, Range 23 and the southeast corner of Section 5, some 35 producing wells were drilled, one of which was called a gusher and produced 500 barrels a day. Eight producing wells drilled in Section 9 had a showing of oil. In Section 16, four wells were drilled, one producing 100 barrels a day, and one 50 barrels a day. In Section 10, eleven wells were drilled, one of which was designated a producer. In Section 15, some fourteen wells were drilled, scattered over the section; the majority of which proved to be producers. In Section 14, fifteen producing wells were drilled, one of which, the Regal #1, was a gusher. In Section 23 approximately twenty producing wells were drilled. In Section 24, twenty producing wells

were drilled. In Section 30, Township 32, Range 24, four producing wells are of record, of which one well was a "gusher."

The production by years from Section 16 during the period from 1910 to 1919, both inclusive, was as follows:

Section 16.

Year.	Production in Bbls.
1910—Feb.—Dec.	86,434
1911	425,083
1912	580,775
1913 (1/1–3/1)	84,513
1913 (3/1–12/31)	308,828
1914	315,130
1915	193,832
1916	176,509
1917	144,675
1918	106,799
1919	103,500

[90] The production by years from Section 22, during the period from 1910 to October 31st, 1915, was as follows:

Section 22.

Year.	Production in Bbls.
1910	628,291.94
1911	1,342,504.05
1912	1,028,559.95
1913	728,495.22
1914	608,124.19
1915 (1/1–10/31)	285,390.26

The production by years from Section 26 during the period from 1910 to October 31st, 1916, was as follows:

Section 26.

Year.	Production in Bbls.
1910	153,508.90
1911	371,003.64
1912	400,845.27
1913	366,606.62
1914	266,925.06
1915	186,609.95
1916 (1/1–10/31)	133,499.25

Testimony was given as to various sales of oil properties. In December 1908, Barlow sold eight acres in Section 25, Township 32, Range 23, for $25,000 cash. At the time of the sale there was no development on that tract. The line of strike had not been definitely established. Production had been obtained on Section 25.

In January, 1908, M. J. Laymance gave a lease on 20 acres in Section 19, Township 30, Range 22, with option to purchase in fee until January 1, 1909, for $3,000 an acre. This option was exercised. In January, 1908, there were no wells on the property but there were producing wells on the adjoining Section 20. This property was from 16 to 18 miles from Section 16, owned by the petitioner.

[91] In April, 1909, Laymance bought the NW.¼ and SE.¼ of Section 36, Township 12, Range 24, for $160,000, a rate of $500 an acre. No

wells were on the property and the nearest development was in Section 1, about a mile distant. Later the NW.¼ of the NW.¼ sold for $80,000, of which 20 acres were later sold for $3,000 an acre.

In the latter part of 1909, or the first part of 1910, Laymance purchased a leasehold on 320 acres in Section 20, Township 31, Range 23, with an option to purchase the fee. He exercised the option and later within the year while drilling sold the property for $2,000 an acre.

In the latter part of 1909 Laymance purchased a Government location on all of Section 2, T. 32, S., R. 23 E., for $128,000.

There was sold in June, 1910, 480 acres in Section 30, Township 31, Range 23, for $1,500,000 cash and $1,500,000 face value of Associated Oil bonds. Just prior to this sale in May, 1910, a well came in on this property producing 6,000 to 7,000 barrels a day.

In September, 1910, the lessor's twenty per cent interest in 40 acres of Section 2, Township 11, Range 24, was sold for $300,000. Prior to this sale the Lakeview gusher came in and was instrumental in consummating this sale.

W. H. Cooley purchased 160 acres of unpatented land consisting of the E.½ of SW.¼ and W.½ of the SE.¼, Section 31, Township 31, Range 23, in December, 1908, at $2,000 an acre. In December, 1909, he sold the North 80 acres at $3,000 an acre. At the time of this sale a well had been drilled on the South 80 acres producing 406 barrels a day and

the spectacular gusher in Section 6, Township 32, Range 23, had been completed.

S. G. Tryon and associates sold 20 acres of patented land in the NW.¼ of the NW.¼ of Section 36, Township 12, Range 24, in November, or December, 1909, for $3,000 an acre.

[92] In June, 1910, 160 acres of unpatented land being the S.½ of the S.½ of Section 32, Township 31, Range 23, was sold for $1,500 an acre.

In the summer of 1910 there was sold unpatented land in the NW.¼ of Section 32, Township 32, Range 24, as follows: 20 acres W.½ of NW.¼ of NW.¼ for $4,000 an acre; 40 acres SW.¼ of NW.¼ at $3,000 or $3,250 an acre; and 80 acres E.½ of the NW.¼ at $3,250 an acre.

The interest of the North American Oil Consolidated in Section 22, Township 32, S., Range 23 E., was sold in 1915 for $350,000. Prior to the sale that property had produced 4,621,275.61 barrels of oil. More than half of petitioner's property in Section 22 (S.½ of SW.¼, NW.¼ of the SW.¼, the southern part of the N.½ of the SW.¼) was known to be south of the line of strike and therefore unproductive.

The interest of the North American Oil Consolidated in the lease of 160 acres in Section 26, Township 32 S., Range 23 E., was sold in 1916 for $175,000. Prior to January 1, 1913, that property had produced 1,878,998.69 barrels of oil. The interest sold was a lease of four-fifths working interest.

In 1910 the petitioner purchased about 40 acres, being the E.½ of the SE.¼ of Section 15, Town-

ship 32, Range 23, for $40,000. This purchase was primarily to obtain a site for sidetracks, warehouses, shops, etc.

The stock of the petitioner sold in 1910 at from $17.50 to $20 per share and during 1911 and 1912 for $20 per share; 5,466 shares being sold in 1910, 2,129 shares in 1911, and 470 shares in 1912.

The petitioner paid to Spellacy October 26, 1910, $2,500 and March 20, 1911, $40,000 for the purpose of clearing title to a part of Section 16.

On September 27, 1909, President Taft issued an order withdrawing from location practically all of the oil territory on the west side of San Joaquin Valley, included in which was Section 16, Township 32 S., Range 23 E. That [93] withdrawal order did not disturb vested rights in the land which had been acquired prior to September 27, 1909. In a very short time, operators and others in the district began to realize the Government meant business. To operators and dealers, it meant that all open land which they had been in the habit of appropriating by one means or another were going to be very difficult to obtain, that land upon which wells were drilling at the time of the order would be in a much better position; that Government land upon which wells were producing at the time of the order were fairly safe; but that after all, patented land was the only thing that was unassailable. As a result operators and oil men generally became alarmed at the condition of titles on unpatented lands and began to look covetously at patented land which they felt was worth while.

Section 16 was a school section belonging originally to the State of California, and sold by the state to some person.

The oil reserves in the land owned or leased by the petitioner in Section 16 were, 5,476,805 barrels on February 10, 1910, and 4,300,000 barrels at March 1, 1913.

The respondent, in computing invested capital, allowed an amount of $622,527.01, as representing the value of the property in Section 16, acquired for stock and bonds, and the $42,500 of expenditures made in perfecting title. However, in computing invested capital for the years at issue the respondent reduced capital stock and surplus by $1,638,611.21 instead of $877,472.99, the correct amount based upon the valuation allowed. This amount, $877,472.99 represents the difference between $1,500,000 at which Section 16 was entered in the books, and $622,527.01, the value allowed by the respondent.

On March 8, 1913, the petitioner entered into a contract with the General Petroleum Company for the sale of oil at 35¢ per barrel, but on March 1, 1913, the company was selling oil to the Standard Oil Company under contract at 50¢ a barrel.

[94] The corporation income and profits tax returns of the petitioner for the calendar year 1917 were filed on March 27, 1918. The income tax return showed an income tax liability of $9,886.07. The excess profits tax return showed excess profits tax liability for 1917 of $897.90.

A "waiver" dated January 19, 1923, consenting to

> Determination, assessment and collection of the amount of income, excess profits or war profits taxes due under any return made by or on behalf of the said company for the year 1917 * * * irrespective of any period of limitations

was filed on January 26, 1923.

A "waiver" dated January 2, 1924, consenting to

> Determination, assessment and collection of the amount of income, excess profits, or war profits taxes due under any return made by or on behalf of the North American Oil Consolidated for the year 1917 * * * irrespective of any period of limitations was filed on January 10, 1924.

A "waiver" dated January 12, 1924, consenting to

> Determination, assessment, and collection of the amount of income, excess profits, or war profits taxes due under any return made by or on behalf of said corporation for the years 1917 and 1918 * * * irrespective of any period of limitations was filed on January 17, 1924.

A "waiver" dated December 10, 1924, consenting to the

> Determination, assessment, and collection of the amount of income, excess-profits, or war-profits taxes due under any returns made by or on behalf of the said taxpayer for the year 1917 * * * for a period of one year after the expiration of the statutory period of limita-

tions within which assessments of taxes might be made for the year or years mentioned or the statutory period of limitations as extended by Section 277(b) of the Revenue Act of 1924, or by *an* waivers already on file with the Bureau. was filed on December 22, 1924.

The last "waiver" dated November 17, 1925, reads as follows:

[95] Treasury Department
Internal Revenue Service
Form 872A

INCOME AND PROFITS TAX WAIVER FOR TAXABLE YEARS ENDED PRIOR TO JANUARY 1, 1922.

November 17, 1925.

In pursuance of the provisions of existing Internal Revenue Laws The North American Oil Consolidated, a taxpayer of San Francisco, California, and the Commissioner of Internal Revenue hereby waive the time prescribed by law for making any assessment of the amount of income, excess-profits, or war-profits taxes due under any returns by or on behalf of said taxpayer for the year (or years) 1917 under existing revenue acts, or under prior revenue acts.

This waiver of the time for making any assessment as aforesaid shall remain in effect until December 31, 1926, and shall then expire except that if a notice of a deficiency in tax is sent to said taxpayer by registered mail before said date and (1) no appeal is filed therefrom with the United States

Board of Tax Appeals then said date shall be extended sixty days, or (2) if an appeal is filed with said Board then said date shall be extended by the number of days between the date of mailing of said notice of deficiency and the date of final decision by said Board.

(Seal) NORTH AMERICAN OIL CONSOLIDATED,

Taxpayer.

(Signed) By T. C. KIERULFF, President.
(Signed) FRANK EVANS, Secretary.
(Signed) D. H. BLAIR, Commissioner.

The sixty day letter was mailed to the petitioner on September 28, 1925.

During the year 1917 the petitioner paid $8,000 to the Oil Industry Association.

During the years 1917 and 1918 certain of the petitioner's oil derricks were damaged by fire. In repairing and rebuilding these oil derricks the petitioner made expenditures as follows:

1917	$5,271.50
1918	7,095.41

The respondent allowed as a fire loss in 1917 the amount of $1,646.19, and as a fire loss in 1918 the amount of $3,500. He reduced invested capital for 1918 in the amount of $1,646.19 and for 1919 in the amount of $5,146.19 on account of fire losses.

[96] An oil derrick is a structure erected for the purpose of suspending tools for drilling, the tools consisting of the necessary equipment in the drilling of a well. After the well is drilled it is

necessary to maintain the derrick for the purpose of re-drilling or for pulling the tubing, making the necessary repairs to the well, baling, etc.

The petitioner acquired Section 2, Township 32, Range 23 East, M. D. B. & M., Kern County, California, by purchase on July 15, 1913. Some time prior to November 30, 1915, suit was instituted by the United States Government to oust the North American Oil Consolidated from possession of the premises and on February 3, 1916, the following order was entered in the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit, in Equity No. A–48:

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTH AMERICAN OIL CONSOLIDATED, PIONEER MIDWAY OIL COMPANY, UNION OIL COMPANY OF CALIFORNIA, PRODUCER'S TRANSPORTATION COMPANY, WALTER P. FRICK, JOHN F. CARLSTON, CLARENCE J. BERRY, DENNIS SEARLES, WALTER H. LEIMERT and WICKHAM HAVENS,

Defendants.

ORDER APPOINTING RECEIVER.

This suit coming on to be heard on motion of the complainant for the appointment of a receiver

and for an injunction, and having been heard on the 30th day of November, 1915,—

IT IS NOW CONSIDERED, ORDERED AND ADJUDGED that Howard M. Payne be, and he hereby is, appointed receiver of all the property described in the Bill of Complaint herein claimed by the defendants, to wit:

> [97] All of Section Two (2), Township Thirty Two (32), South, Range Twenty-three (23) East, Mount Diablo Base and Meridian, and situated in Kern County, State of California.

and of the oil, gas and all other property of every kind now situated on the said land, or already extracted therefrom, and still in the possession of defendants; and the defendants, and each of them, their agents, attorneys and employees, are enjoined from removing said oil, gas, or other property or any part thereof, from said land, or in any manner interfering with the order of this Court, and are enjoined from further producing oil from said land, except by permission and under the direction of the said receiver.

Said receiver is directed to receive, and the said defendants are directed to surrender to said receiver all moneys in their hands or in the hands of any person or corporation for them, which are the proceeds of the sale of oil or gas produced from said land hereinbefore described, and such persons holding such funds are directed to pay same to said receiver; and the said receiver is directed to collect

any notes, accounts, or other evidence of debt due or payable on account of oil and gas produced from said land and sold by or for said defendants, or any of them.

The said receiver is given power and directed to operate any oil or gas well or wells on said property, or to permit them to be operated by the respective defendants now in possession of or operating same, or who have heretofore operated on said lands; or to close said wells, if he deems it necessary or advisable to do so in order to conserve the oil and gas in said lands and prevent said property from being damaged or the oil and gas from being wasted.

The said receiver is directed to ascertain the quantity of oil and gas heretofore extracted by said respective defendants, and what disposition has been made thereof, and keep an account thereof, and to keep an accurate account of all oil and gas hereafter produced from said lands, and to sell said oil and gas for the best price obtainable.

For the purpose of making an investigation and determining the condition of wells drilled on said lands, and particularly for the purpose of determining whether water is infiltering the oil sands or reservoirs on said lands, and for the further purpose of ascertaining the amount of oil and gas heretofore produced, the price at which the same has been sold, and the value thereof, the receiver is directed and empowered to examine the logs of the wells and the books of account kept by the defendants or any of them in the development and operation of said lands.

For the purpose of preventing damage to said lands by the infiltration of water into the oil lands and otherwise, and for the purpose of protecting and operating the said property and carrying out the provisions of this order, the said receiver is authorized to employ such assistants and incur such expense, to be paid out of the moneys coming into his hands as receiver, as he shall deem necessary, subject to the approval of this Court.

[98] A bond in the sum of Ten Thousand (10,000) Dollars, to be approved by this Court, shall be given by the receiver within fifteen days from the filing of this order; provided the solicitor for the complainant or for the defendants, or either of them, may at any time upon one day's notice to counsel for the opposite parties, apply to the court for an increase in the amount of said bond.

The moneys coming into the hands of the said receiver shall, unless otherwise directed by the Court, be deposited in a bank or banks in special interest bearing accounts in the joint name of the receiver and the clerk of this court, and subject to the joint check and control of such persons, except so much of said funds as may be necessary to pay the monthly current expenses of the receiver in executing the orders of this court, and such sums as may be necessary for such purposes shall be deposited in a bank or banks to the credit of such receiver, as receiver for the respective defendants, and shall be subject to the receiver's check.

The amount of compensation to be paid to the receiver in this suit is to be determined hereafter.

This 2 day of February, 1916.

M. T. DOOLING,
United States District Judge.

On June 5, 1917, the following decree was entered in this case:

FINAL DECREE.

This cause came on for hearing at a former day of this court and was argued by counsel and now, upon consideration thereof, it appearing to the Court that plaintiff is not entitled to the relief demanded in the complaint, or any part thereof, and there is no equity in the bill—

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the suit be and the same is hereby dismissed, that the injunction heretofore issued is dissolved, and the order appointing a receiver vacated;

PROVIDED, HOWEVER, that the Court will retain jurisdiction to settle and adjust the accounts of the receiver, who is hereby ordered and directed to make and file his final account within thirty days from the filing of this decree.

R. S. BEAN,
Judge.

Dated this 5th day of June, 1917. Decree entered and recorded June 7th, 1917.

WM. M. VAN DYKE,
Clerk.

(Res. Ex. III.)

[99] The cause was appealed (United States vs. North American Oil Consolidated, 242 Fed. 723, 264

Fed. 336) and it was finally disposed of by the Supreme Court of the United States in its mandate dated March 21, 1922, which provided as follows:

United States of America,—ss.

The President of the United States of America: To the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, GREETING:

Whereas, lately in the United States Circuit Court of Appeals for the Ninth Circuit, in a cause between the United States of America, appellant, and North American Oil Consolidated, Pioneer Midway Oil Company, Union Oil Company, of California, Producers Transportation Company, Walter P. Frick, John F. Carlston, Clarence J. Berry, Dennis Searles, Walter H. Leimert, and Wickham Havens, appellees, No. 3340, wherein the decree of the said Circuit Court of Appeals, entered in said cause on the 5th day of April, A. D. 1920, was in favor of the said appellees, North American Oil Consolidated et al., and against the said appellant, as by the inspection of the transcript of the record of the said United States Circuit Court of Appeals which was brought into the Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and twenty-one of the said Supreme Court this cause having been called to the attention of the

Court by Mr. Solicitor General Beck, of counsel for the appellant, and it appearing to the Court that a stipulation of counsel for the respective parties to dismiss this appeal has been filed,

THEREFORE, in pursuance of said stipulation, it is now here ordered, adjudged and decreed by this Court that this appeal be, and the same is hereby, dismissed.

March 21, 1922.

You, therefore, are hereby commanded that such proceedings be had in said cause, as according to right and justice, and the laws of the United States ought to be had, the said appeal notwithstanding.

WITNESS, the Honorable WILLIAM H. TAFT, Chief Justice of the United States, the twenty-third day of March, in the year of our Lord one thousand nine hundred and twenty-two.

WM. R. STANSBURY,
Clerk of the Supreme Court of the United States.

(Res. Ex. IV.)

[100] Pursuant to the authority contained in the order appointing him, the receiver permitted the property to remain in the physical possession of, and to be operated by, the petitioner. At all times during the receivership the income from the oil produced from Section 2 was entered on the books of the petitioner as its income. The income from said Section 2 was not included in the petitioner's original return for 1916 which was filed in March, 1917, but was included in its amended return for 1916 which was filed on March 27, 1918. By letter dated March 23, 1918, attached to the amended re-

turn the respondent was fully advised as to all the facts regarding the litigation and receivership. A revenue agent made an examination of the petitioner's books in 1920.

The net income impounded in the hands of the receiver from Section 2, during the period from February 2, 1916, to December 31, 1916, and released in June, 1917, by the final decree of the United States District Court vacating the order appointing the receiver, was $171,979.22, of which $10,126.04 was turned over to Wheeler and Bowie in accordance with the terms of a contract dated January 1, 1916, between petitioner and Wheeler and Bowie.

On January 1, 1916, the petitioner entered into the following contract with Charles S. Wheeler and John F. Bowie:

THIS AGREEMENT, made this 1st day of January, 1916, by and between NORTH AMERICAN OIL CONSOLIDATED (a corporation), hereinafter referred to as the "COMPANY," party of the first part, and CHARLES S. WHEELER and JOHN F. BOWIE (copartners), Attorneys-at-law, hereinafter referred to as the "Attorneys," parties of the second part,

WITNESSETH:

Said parties, in consideration of a cash retainer heretofore paid by the Company to the Attorneys and of the promises and agreements on the part of each of them to be performed as hereinafter specified, agree and covenant, respectively, as follows:

[101] The Attorneys shall furnish all legal services necessary or proper and take all legal steps and proceedings to bring to final judgment and conclusion, in so far as the interests of the Company are concerned, three (3) certain actions now pending in the District Court of the United States for the Southern District of California, Northern Division, entitled "UNITED STATES OF AMERICA, Plaintiffs, vs. NORTH AMERICAN OIL CONSOLIDATED, ET AL., Defendants, in Equity, Number A 48," and "UNITED STATES OF AMERICA, Plaintiff, vs. RECORD OIL COMPANY, NORTH AMERICAN OIL CONSOLIDATED, ET AL., Defendants in Equity, Number A 41," and "UNITED STATES OF AMERICA, Plaintiff, vs. CONSOLIDATED MUTUAL OIL COMPANY, NORTH AMERICAN OIL CONSOLIDATED, ET AL., Defendants, in Equity, Number A 42." Said Attorneys shall further render all legal services necessary or proper to prosecute and procure the issuance of patents from the United States in respect of applications for patent now pending in the United States Land Office, in behalf of certain applicants, who have agreed to convey to the Company, which applications cover all of Section two (2), in Township thirty-two (32) South; Range twenty-three (23) East, M. D. B. & M., in the county of Kern, State of California, containing approximately six hundred and fifty (650) acres of land.

The Company agrees to supply and to advance to the Attorneys all necessary and proper costs and disbursements in connection with said court pro-

ceedings and land office proceedings and in any appeals or reviews thereof, as well as all necessary and proper traveling and incidental expenses of the Attorneys in connection therewith.

The Company further agrees in the event of the successful termination of said court and land office proceedings in its favor, and not otherwise, that four (4%) per cent. of all the oil, gas, or other mineral produced from said Section two (2) or any part of said section, from and after the first day of January, 1916, shall be and become the property of the Attorneys and shall be marketed by the Company to the best advantage and the entire proceeds of the sale thereof paid over to the Attorneys.

Successful termination of said court and land office proceedings, as intended by the parties hereto, means the issuance of patents by the United States Government, either covering the whole of said Section two (2) in favor of the applicants therefor who have agreed to convey the same to the Company, or the issuance of such patents covering any portion of said section, in which latter event said rights of the Attorneys shall attach to any and each portion patented.

In the event that the Attorneys shall become entitled to said four (4%) per cent of oil, gas, or minerals, as hereinabove provided, the times, methods and manner of delivering the same or the proceeds of sale thereof by the Company to the Attorneys, and all incidental rights of the Attorneys in respect thereto, shall be the same as the rights of the parties of the first part, J. S. Carlston, W. H. Leimert,

Wickham Havens, W. P. Frick, and Clarence J. Berry, in an agreement with said North American Oil Consolidated, dated the 11th day of July, [102] 1913, and a further supplemental agreement between the same parties, dated the 22nd day of July, 1913, save and except in the following particulars as to which the terms and conditions in said agreements contained, are agreed to be modified between the Company and the Attorneys, as follows:

FIRST: The Attorneys shall not be entitled to any of said products or the proceeds thereof except in the event of the successful termination of said proceedings as hereinabove provided; but in the event of such successful termination, the Company shall account to the Attorneys for the proceeds of the sale of four (4%) per cent of such mineral products from the first day of January, 1916, to the date of such successful termination, after which date the rights of the Attorneys shall attach, as hereinabove specified.

SECOND: The rights of the said Attorneys in respect of such four (4%) per cent shall be subject to the rights of the said Carlston and his associates so long as the said agreement and supplementary agreement shall remain in effect between said associates and the said Company, but said four (4%) per cent to which said Attorneys may become entitled shall be based upon the total production of minerals from the said property, without regard to the deductions in favor of said Carlston and his associates; and, furthermore, the rights of the Attorneys to such four (4%) per cent shall not terminate

upon the event specified in said agreements for the termination of the rights of said Carlston and his associates, but on the contrary shall continue in accordance with all the terms and provisions, *mutatis mutandis,* of the said agreement and supplemental agreement relative to the times, methods and manner of making payments or deliveries and rights incidental thereto, such as inspection, checking of production and securing continuity of production, storage of oil and conservation and protection of the premises, so long as there shall be any production of oil, gas, or other minerals from said premises, and the rights of the Attorneys to such four (4%) per cent upon attaching shall thereafter run with the land and bind the said Company and its successors and assigns.

IN WITNESS WHEREOF, the said party of the first part has caused its corporate name to be subscribed and its seal to be hereto affixed by its officers thereunto duly authorized, and the parties of the second part have hereunto set their hands on the day and year first above written.

NORTH AMERICAN OIL CONSOLIDATED.
By (Signed) LOUIS TITUS,
Its President.
By (Signed) C. F. NANCE,
Its Secretary.
(Signed) CHARLES S. WHEELER and
(Signed) JOHN F. BOWIE.

[103] The following amounts represent four per cent of that part of the gross production from

Section 2, Township 32 S., Range 23 E., which was sold in 1917, 1918 and 1919, respectively:

1917	$20,441.18
1918	21,730.60
1919	27,136.91

These amounts were turned over to Wheeler and Bowie in the respective years in which received by the petitioner and deductions therefor were claimed in its income tax returns for the respective years.

For the year 1917 petitioner also deducted on its return the sum of $15,354.36, which represented four per cent of the sales price of the oil produced and sold in 1916, but not paid to Bowie and Wheeler until 1917.

The Commissioner disallowed as deductions the amounts claimed in 1917 and allowed as deductions the amounts claimed for the years 1918 and 1919.

The litigation over Section 2, Township 32 S., Range 23 E., was successfully terminated by the attorneys on March 23, 1922. On April 12, 1922, the United States patent to Section 2 was issued to certain applicants who had agreed to convey to petitioner.

During the year 1917 the petitioner expended $5,765.94 for pumping engines, sucker rods, small receiving oil tanks, well casing and tubing. This expenditure was disallowed as a deduction for business expenses in 1917 by the respondent. In accordance with the admission of the respondent at the hearing, under the circumstances in this case, the expenditures of $5,765.94 constituted an allowable deduction.

During the year 1918 $17,598 and during the year 1919 $5,049.28 were expended for gasoline engines used in operating the pumps at the various oil-wells. These amounts were added to capital and disallowed as expense deductions by the respondent.

[104] The respondent reduced invested capital on account of depletion sustained during prior years by the following amounts:

1917	$602,820.96
1918	707,819.73
1919	819,751.89

He reduced invested capital for 1918 by an amount of $65,274.35 and for 1919 by an amount of $33,217.57, representing additional taxes for the previous year, prorated over the taxable year.

In computing invested capital and depletion allowances for the years 1917, 1918, and 1919, the respondent added the amount of $287,687.03 to the capital sum remaining in 1916, as shown by a valuation report dated July 30, 1925, which was stipulated in evidence solely for the purpose of showing respondent's computation of invested capital and depletion allowances. The sum so added was added as representing the capitalized cost of wells developed on Section 16, Township 32 S., Range 23 E., during 1916. The amount involved was actually expended by the petitioner in drilling wells during the years 1910 and 1911 as follows: $51,727.64 in 1910 and $235,959.39 in 1911, and these sums should have been added to capital account during the years 1910 and 1911.

OPINION.

ARUNDELL.—By amendment to its petition in Docket No. 8714 the petitioner claims that collection of any taxes for the year 1917 is barred by the statute of limitations. By the terms of Commissioner's mimeograph 3085, promulgated April 11, 1923, the "waiver" of January 19, 1923, expired on April 1, 1924. Before the expiration date of the first "waiver" a second one was executed on January 2, 1924, and filed January 10, of the same year. A third was executed on January 12, 1924, and filed on January 17, 1924, which was identical with the January 2d "waiver" except that the year 1918 was included. These latter "waivers" were not affected by mimeograph 3085, Cunningham Sheep and Land [105] Company, 7 B. T. A. 652, and the period for assessment and collection of taxes for 1917 had not expired when the further "waiver" was filed on December 22, 1924, extending for an additional year the period for assessment and collection.

The last "waiver," dated November 17, 1925, for the year 1917 was filed prior to the date the last mentioned "waiver" would expire, and provided that assessment could be made up to December 31, 1926. No provision for collection was included in this "waiver," but this becomes unimportant in view of the provisions of Section 278(d) of the Revenue Act of 1924. Sunshine Cloak and Suit Company, 10 B. T. A. ——. We are of the opinion that the statute has not expired either on the assessment or collection of taxes for the year 1917.

Several witnesses testified that they knew Section 16 in general, or had been over it; that they were familiar with various sales of land in this oil-field and that the petitioner's land in Section 16 was worth about $3,000 an acre on February 10, 1910, and in excess of that amount on March 1, 1913. Some of the witnesses predicated this value upon the favorable location of Section 16 in relation to a theoretical "gusher zone" which was supposed to pass through the northeast quarter.

The sales which were cited as a basis for comparison were very briefly presented, without any details that might make direct comparison possible. The sale of 8 acres for $25,000 in Section 25, Township 32, Range 23, by Barlow was too remote in point of time to have much weight in a valuation as of 1910. The same may be said of the sale by Laymance of 20 acres in Section 19, Township 30, Range 22, in January, 1909, and in addition this property being some 18 miles away, was exceedingly remote for direct comparison.

[106] The purchase by Laymance in Section 36, Township 12, Range 34, at $500 an acre in April, 1909, and later sale of a part thereof at $3,000 an acre is of land over five miles distant from Section 16. The date of the sale is not given, but the record shows that a gusher came in on this section in November, 1909, known as the "Wellman"; also a gusher came in on the adjoining Section 35 in August, 1909.

The sale in Section 30, Township 31, Range 23, in June, 1910, for cash and bonds was just after

a well producing 6,000 to 7,000 barrels a day came in on the property.

The sale in Section 2, Township 11, Range 24, in September, 1910, was admitted to have been consummated largely on the showing of the Lake View gusher which was only about a mile distant.

The sale by Tryon in Section 36, Township 12, Range 24, in November or December, of 1909, for $3,000 an acre was after a gusher came in on Section 35, and probably after the Wellman gusher came in on Section 36.

The sales in Section 32, Township 32, Range 24, in the summer of 1910, were apparently after the Lake View gusher came in less than 2 miles away, and after the gusher came in on Section 30, Township 32, Range 24, the property adjoining to the northwest.

From these sales it is apparent that values depend largely upon local or near-by development. No sale was cited at rates of $3,000 an acre or over in 1909 or 1910 unless the property was near or associated with a gusher. The great divergence of values from $200 an acre to $6,000 an acre indicates the great difficulty of direct comparison.

The land in Section 16 was acquired in part by the predecessors of the petitioner and in part by the petitioner. Some of the prices were agreed upon in the middle of 1909, and therefore might be considered remote in point of [107] time from February 10, 1910. However, there were certain transactions in 1910 that have some bearing on the value of this section. On February 4, 1910, Louis

Titus purchased the N.½ of the NE.¼ of the SE.¼ of Section 16, twenty acres, for $30,000, or $1500 an acre. This was only 6 days prior to the date of acquisition by the petitioner and was apparently an arm's length transaction consummated on that date, since prior to that time Louis Titus had no options or leases or agreements on this land. On February 3, 1910, Titus acquired a lease on the E.½ of the NE.¼, the NW.¼ of the NE.¼, and the North 15 acres of the N.½ of the SW.¼ of the NE.¼, no bonus being paid therefor, but providing for a one-fifth royalty. In so far as the E.½ of the NE.¼ is concerned, this transaction was at arm's length and Titus had previously no option agreements or leases on this portion, which were effective at the time this lease was made. The land covered by this lease was purchased by the petitioner in August, 1910, when $200,000 par value of bonds and $200,000 par face value of stock, together with $2,244.50 in cash was paid over to the Lockwood Company. The petitioner has introduced evidence which convinces us that on Augnst 10, 1910, the bonds had a market value of eighty per cent of the face value, and the stock twenty per cent of par. Assuming that all of the consideration was paid for the 135 acres under lease, the rate would be approximately $1500 per acre. This land included practically all of the area in Section 16, which had been designated by the experts as lying within the "gusher zone." This sale was made after the Regal No. 1 gusher came in on Section 14, a little over one mile to the east, and after the Lake

View gusher came in on Section 25, Township 42, Range 24, and the Standard gusher on Section 30, Township 32, Range 24.

The S.½ of the SW.¼ was also purchased by the Hartford Oil Company on or before February 10, 1910, and the petitioner does not contend that it was [108] purchased before February 10. This land was acquired for $78,480, or approximately $980 an acre.

The transactions within Section 16 that are evidence of value on February 10, 1910, are:

30 acres, N.½ of NE.¼ of SE.¼, purchased at $1,500 an acre.

135 acres, NE. ¼, Fee subject to lease, purchased at $1,500 an acre.

80 acres, SW.¼, Fee subject to lease, purchased at $980 an acre.

The purchase of the 135 acres in August, 1910, is considered a maximum value applicable to the 135 acres as of February 10, 1910, in view of the testimony as to general increase in values in this district.

These transactions within Section 16 itself covering over half the area, are certainly of material value in ascertaining the actual cash value of the entire holdings of the petitioner in Section 16, and the weight that should be given to the theory of the "gusher zone" passing over the northeast quarter.

There is evidence in the record which would raise some doubt as to the possibility of finding a "gusher" in the NE.¼ of Section 16. The exhibits introduced in evidence disclose the depth at which

various gushers penetrated the oil sands and we have set forth in our findings of fact this information as it applies to certain wells.

The gushers located to the east and southeast of Section 16 penetrated the oil sands at from 1100 to 1500 feet below sea level. The exhibits show that the deepest sands that could be drilled in Section 16 were only about 700 feet below sea level.

The "gushers" to the northwest encountered the sands at points where the oil sands were indicated at sea level or above sea level. It is also shown by the exhibits submitted that the "gushers" to the northwest are not located on the Spellacy Anticline, and therefore the conditions in that section are not indicative of what might be expected on the Spellacy Anticline.

[109] The developments surrounding Section 16 at February 10, and March 1, 1913, did not reduce this doubt but rather increased it since no "gushers" were found within a mile of Section 16, although numerous wells were drilled to the northwest and southeast and many wells were drilled to the east and north. The record shows that wells were drilled in Section 9, one-half mile to the north, in Section 15, very near the eastern line of Section 16, in Section 14, southwest corner. None of these wells, although located in the so-called "gusher-zone," are reported as being "gushers" or even commercial wells.

By March 1, 1913, some 100 wells had been drilled in the " gusher zone" for Section 6, Township 32, Range 23, to Section 30, Township 32, Range 24,

and only one real "gusher," the Regal No. 1, was developed. This well penetrated the sands at a point where the sands are indicated at a depth of 1300 feet below sea level.

It was subsequent to the date when this well came in that the petitioner was able to purchase the fee to 135 acres in the NE.¼ of Section 16 at a price of some $1,500 an acre, indicating that the previous owners of the property placed little reliance on the possibility of a "gusher zone" being found in that area.

The wells put down by the petitioner in the NE.¼ in 1911 also tended to disprove the "gusher zone" theory. Well No. 71 was drilled in the extreme northeast corner and produced about 50 barrels a day. Well No. 67 was in the northwest corner and produced 100 barrels a day. Both of these wells were in a theoretical "gusher zone."

After a review of all the testimony we are of the opinion that the cost of Section 16 to the petitioner was as follows:

[110]

Leasehold on 135 acres in NE.¼, acquired by the predecessor 7 days prior to February 10, 1910	No bonus value
S.½ of SW.¼, acquired on or before February 10, 1910, by predecessor for $78,480.00	$ 78,480.00
Balance of area comprising about 265 acres, valued at $1,500 an acre	397,500.00
	$475,980.00
Subsequently paid to perfect title	$ 42,000.00

Fee title to 135 acres acquired in August, 1910, for bonds and stock, and cash.. 202,244.50

Total cost $720,224.50

Between February, 1910, and March 1, 1913, about 26 wells were drilled in the S.½ of Section 16. One well, No. 34, produced from 300 to 400 barrels a day and was considered very valuable. The cost of this development was $51,727.64 in 1910 and $235,959.39 in 1911, a total of $287,687.03. The production from Section 16 prior to March 1, 1913, was 90,414 barrels in 1910, 425,000 barrels in 1911, 580,775 barrels in 1912, and 84,513 barrels for two months in 1913, or a rate of 507,000 barrels a year.

The estimate of oil content at March 1, 1913, made by the petitioner's geologist was 4,300,000 barrels. The market price of oil at March 1, 1913, was not over 35 cents a barrel. In order to realize this production it would appear that some 60 or 70 additional wells would have to be driven. The average cost of wells in the S.½ of Section 16 was $8,000 to $9,000 a well, and since wells in the N.½ of the SE.¼ and in the NE.¼ would have to be deeper, the average cost would be greater. Then, in order to develop this property, $700,000 to $800,000 would have to be spent in drilling wells.

With all of these conditions in view and after considering the opinions of the various witnesses, we are of the opinion that the fair market value [111] of the petitioner's oil land in Section 16 was $700,000 exclusive of the value of development already completed. Accordingly the depletion rate

would be based on this value and 4,300,000 barrels of oil.

The petitioner is also entitled to a deduction based on the development expended in 1910 and 1911. These expenditures were capital expenditures subject to exhaustion based on the reserve in February, 1910, of 5,476,805 barrels.

During 1917 the petitioner paid to the Oil Industry Association $8,000. No evidence was presented on this issue and consequently the action of the respondent is approved.

During 1917 and 1918 it *appreas* that certain damage was done to oil derricks by fire and certain sums were expended in restoring the derricks. The destruction of a derrick, or a part of a derrick, by fire resulted in a loss, and a loss of this character represents an allowable deduction under section 214 (a) (4) of the Revenue Act of 1918. The amounts spent in restoring the property destroyed are capital expenditures. Accordingly, the action of the Commissioner in respect to this issue is approved. Nor do we find error in the action of the respondent in reducing invested capital for 1918 and 1919 in amounts equal to the amounts allowed as deductions for fire losses.

No testimony was introduced relative to the expenditures for gasoline engines in 1918 and 1919. Expenditures of this nature are normally capital expenditures. The action of the Commissioner in disallowing the deductions is approved.

During the years here involved the petitioner was in complete possession of Section 2, except that

from February 2, 1916, to June 5, 1917, it was operating under the supervision and control of a receiver. It accrued in [112] each year on its books the income applicable to the oil produced and sold. During 1917, however, it did receive the amounts which had been held by the receiver representing income from February 2, 1916, to June 5, 1917.

The respondent affirmatively alleges that the amount impounded in the hands of the receiver in 1916 and released to petitioner in 1917 was income to the petitioner in the latter year. The respondent's principal argument in support of his claim herein is that petitioner was on the cash receipts and disbursements basis in the years 1916 to 1919, inclusive, and, as the amount here involved was not actually received by the petitioner until 1917 it must be taxable income in that year. We think it immaterial whether petitioner's accounts were kept on the receipts and disbursements basis or some other basis as permitted by section 13(d) of the Revenue Act of 1916. The fact is that the income was actually produced in 1916. The sole reason that it did not reach the petitioner in that year was because of the suit by the United States. By reason of that suit a receiver was appointed, who actually received the income, and who should have reported it for taxation. Section 13(c) of the Revenue Act of 1916; United States vs. Chicago & E. I. Ry. Co., 298 Fed. 379; Forstmann vs. Ferguson, 17 Fed. (2) 659, affirmed, —— Fed. (2) ——. If the receiver did not report it, that is no sufficient

reason for taxing the petitioner on it in a later year. Accordingly, the amount of $171,979.22 received by petitioner in 1917 is not an item of income in that year. This amount is the amount stipulated as being the net income impounded in the hands of the receiver during the period February 2, 1916, to December 31, 1916. The amount which the respondent alleges should be included in 1917 income is $253,150.96. What the difference consists of we do not know. The burden being on the respondent to establish his affirmative allegation in regard [113] to this amount, and he having failed to do so, we must hold that no part of it may be included in income for 1917.

The parties have stipulated that the amounts paid to Wheeler and Bowie in 1917, 1918 and 1919 represented four per cent of gross production specified in the contract, also that $35,795.54 deducted in 1917 represented accruals for 1916 and 1917. Since the four per cent in 1917 amounted to $20,441.18, the accrual for 1916 must have been the difference or $15,354.36.

The agreement with Messrs. Wheeler and Bowie provided that the petitioner would pay to them four per cent of all the oil, gas, or other mineral produced from Section 2, in the event of the successful termination of certain court and land office proceedings and not otherwise, that "successful termination of said court and land office proceedings * * * means the issuance of patents by the United States Government, either covering the whole of Section 2 in favor of the applicants there-

fore * * * or the issuance of such patents covering any portion of said section, in which latter event said rights of the attorneys shall attach to any and each portion patented"; that "the attorneys shall not be entitled to any of said products or the proceeds thereof except in the event of the successful termination of said proceedings * * * but in the event of such successful termination the Company shall account to the Attorneys for the proceeds of the sale of four per cent of such mineral products from the first day of January, 1916, to the date of such successful termination after which date the rights of the Attorneys shall attach"; that "the rights of the Attorneys to such four (4%) per cent upon attaching shall thereafter run with the land and bind the said Company and its successors and assigns."

The petitioner contends that the agreement with the attorneys conveyed to them an interest in the real estate, and consequently the proceeds derived [114] from the sale of four per cent of the oil were not income to the petitioner since by agreement the petitioner owned only a ninety-six per cent interest in the oil property.

In support of this contention the petitioner cites the case of Graciosa Oil Company vs. Santa Barbara, 155 Cal. 140, 99 Pac. 483, which involved taxes assessed against the lessee of oil property. In this case the Court said:

> But the contract in question vests no present title in a stratum in place. It leaves the title to the oil in the land owners until it is brought

to the surface. The right vested in the plaintiff is an estate for years, so far as necessary for the purpose of taking oil therefrom, and it carries with it the right to extract the oil and remove it from the premises. This right constitutes, for the term prescribed, a servitude on the land and a chattel real at common law.

We fail to see that the rights of the attorneys in this case are at all similar to the rights of the lessee in the Graciosa case. The attorneys had the right to receive four per cent of the oil produced. They had no right to extract oil or to enter upon the land for that purpose, a point on which the decision in the Graciosa case was largely based. If oil was not produced from Section 2, the attorneys would have no claims which they could enforce. By no exercise of the imagination can we read into the agreement any assignment of a portion of the fee title to land, nor any title to an undivided interest in the oil stratum. The attorneys' rights begin only after oil has been produced, and then only to the extent of receiving four per cent of the oil produced or the proceeds of a sale thereof. We are, therefore, of the opinion that the attorneys did not acquire an interest in the real estate, and that all of the income derived from the sale of oil from Section 2 was income of the petitioner.

[115] We have held that the expenses of defending title are capital expenditures. Consolidated Mutual Oil Co., 2 B. T. A. 1067; West End Consolidated Mining Co., 3 B. T. A. 128; Bugher et al., Executors, 9 B. T. A. 1155. Therefore, the amounts

paid the attorneys in 1917, 1918 and 1919 are not deductible as expense, but are capital expenditures.

The amounts paid the attorneys being capital expenditures, it follows that depletion is allowable in respect of such amounts. The question then arises as to how such allowances shall be computed. Ordinarily, depletion is allowable in respect of capital costs by spreading the cost over the remaining life of the oil reserves. But that method is inapplicable here for the reason that as the oil reserves were depleted the capital cost would be annually increased, which would necessitate an annual increase in the depletion rate and result in unreasonable depletion deductions. Such a method might do very well and might be the only one that could be used where the capital cost was applicable only to future production, but here the amount paid in any year is a part of the cost of both past and current production as well as that in the future. The solution that seems to us will produce a proper result is to allow as depletion in each year an amount equal to the four per cent paid to the attorneys. By this method, when eventually production ceases, the petitioner will have returned to it through the depletion allowances exactly the amount of its capital expenditure and the depletion deduction each year will be reasonable.

In computing invested capital for the years in question surplus should be reduced by the depletion sustained due to the extraction of oil from the property. Such depletion should be based upon the cost of the oil properties and subsequent capital additions, the oil reserves applicable thereto and the oil

extracted to the year in question. This is in accord with the several [116] cases involving depreciation sustained, previously passed upon by the Board, and is in accordance with the decision in W. S. Bogle and Co., Inc., 5 B. T. A. 541, and Entress Brick Co., 9 B. T. A. 588. The depletion sustained should be recomputed in the light of the finding in this case.

In accordance with the stipulation respecting the capital expenditures of $51,727.64 in 1910 and $235,959.39 in 1911, these amounts should be taken into capital accounts for the years in which expended, and the undepleted balances added to capital sum remaining in 1916 for the purpose of computing invested capital and depletion allowances for 1917, 1918 and 1919.

The reduction of invested capital for the years 1917, 1918 and 1919 on account of depletion sustained in prior years was alleged in the petitions as an error on the part of the respondent. This was not urged at the hearing, being only briefly mentioned by counsel for petitioner in his opening statement, and is not mentioned at all in petitioner's brief. We affirm the respondent's computation in principle, but adjustments will necessarily be made in the amounts upon the basis of value of petitioner's lands for depletion purposes as found by this decision.

The respondent's reduction of invested capital on account of prior years' taxes is likewise affirmed in principle, Section 1207, Revenue Act of 1926; Russel Wheel & Foundry Co., 3 B. T. A. 1168, but

the amounts by which invested capital is reduced will need revision to conform to changes in taxes wrought by this decision. This is a matter to be settled under Rule 50.

Judgment will be entered under Rule 50.

Now, November 6, 1930, the foregoing findings of fact and opinion certified from the record as a true copy.

[Seal] B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

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[117] United States Board of Tax Appeals, Washington.

DOCKET Nos. 8714–16,107.

NORTH AMERICAN OIL CONSOLIDATED,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION.

Pursuant to opinion and findings of fact promulgated May 24, 1928, the respondent herein, to wit, on August 20, 1929, having filed a proposed re-determination for the years 1917, 1918 and 1919, and the petitioners on August 23, 1929, having filed notice of acquiescence to the said proposed re-determination, it is

ORDERED AND DECIDED that there are deficiencies for the years 1917, 1918 and 1919 in the

amounts of $35,806.30, $25,978.28 and $21,697.65, respectively.

(Signed) C. ROGERS ARUNDELL,
Member, U. S. Board of Tax Appeals.

Entered Aug. 29, 1929.

vlh.

A true copy.

[Seal] Teste: B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

Now, November 6, 1930, the foregoing decision certified from the record as a true copy.

[Seal] B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

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[118] Filed Feb. 13, 1930. United States Board of Tax Appeals.

United States Board of Tax Appeals.

DOCKET Nos. 8714–16,107.

ROBERT H. LUCAS, Commissioner of Internal Revenue,

Petitioner,

vs.

NORTH AMERICAN OIL CONSOLIDATED,

Respondent.

PETITION FOR REVIEW IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT AND ASSIGNMENTS OF ERROR.

Comes now Robert H. Lucas, Commissioner of

Internal Revenue, by his attorneys, C. A. Youngquist, Assistant Attorney General and C. M. Charest, General Counsel, Bureau of Internal Revenue, and respectfully shows:

I.

That he is the duly appointed, qualified and acting Commissioner of Internal Revenue appointed and holding his office by virtue of the laws of the United States; that the North American Oil Consolidated (hereinafter called the taxpayer) is a corporation organized and existing under the laws of the State of California whose principal office is located in the city of San Francisco, California, and whose Federal income tax return for the calendar year 1917 was filed in the office of the Collector of Internal Revenue for the First District of California, which is within the jurisdiction of the United States Circuit Court of Appeals for the Ninth Circuit.

[119] II.

The nature of the controversy is as follows:

The taxpayer, since its organization in 1910, and during the years 1916 and 1917, was engaged in the business of producing oil. In the course of its business it derived income from oil-wells on many parcels of land. One of these parcels was acquired by purchase on July 15, 1913, and described as Section 2, Township 32 south, Range 23 east, Mt. Diablo Base and Meridian situated in Kern County, California. Thereafter suit was instituted by the United States Government to oust the taxpayer from the possession of said Section 2. On February 2, 1916, an order was entered in the District Court

of the Southern District of California, Northern Division, appointing a receiver to receive all income derived from this property and to operate or supervise the operation of the oil-wells on this property. The order appointing the receiver was vacated by final decree of the District Court on June 5, 1917. During the period February 2, 1916, to December 31, 1916, the receiver collected and impounded net income from oil-wells on said Section 2 amounting to $171,979.22. This amount was turned over to and received by the taxpayer in June, 1917. The income from said Section 2 was not included in the taxpayer's original return for 1916 which was filed in March, 1917, but was included in an amended return for 1916 which was filed on March 27, 1918. The taxpayer was on the cash receipts and disbursement basis during the years in question. It is the position of the petitioner that the amount impounded in the hands of the receiver in 1916 and released to the taxpayer in 1917, was income to the taxpayer in the latter [120] year, and that as the taxpayer was on the cash receipts and disbursement basis in the years 1916 and 1917, and as the amount involved was not actually received by the petitioner until 1917, it must be taxable income for that year. The Commissioner determined a deficiency for the year 1917 in the amount of $109,239.61, which deficiency, however, did not include tax on the above amount received by the taxpayer in 1917, which had been impounded by the receiver in 1916. The Commissioner, in his amended answer in the proceedings before the Board, affirmatively alleged that he erred in not including as taxable in-

come in 1917 an amount of $253,150.96 received by the taxpayer in that year, which had been impounded by the receiver in 1916. The Board found that it was stipulated that the net income so received from this source was $171,979.22. After giving effect to other adjustments made by the Board and including said $171,979.22 as income for 1917, the deficiency in tax for 1917 amounts to $128,610.36.

That in the proceedings before the Board of Tax Appeals the years 1917 to 1919 were involved and the controversy related to numerous errors alleged on the part of the taxpayer and the Commissioner, some of which were decided by the Board in favor of the Commissioner and some in favor of the taxpayer; but the controversy in this petition for review relates solely to the year 1917 and in respect to the amount of net income impounded by the receiver in 1916 received by the taxpayer in 1917, and the sole question is whether or not said amount shall be included in taxpayer's income for the year 1917.

[121] III.

The taxpayer appealed from the said determination of the Commissioner to the United States Board of Tax Appeals; and the Board ordered and decided that there was a deficiency in tax for the year 1917 in the amount of $35,806.30.

The hearing before the Board of Tax Appeals was held on May 2 to May 6, 1927; the report of the Board, its findings of fact and opinion were promulgated May 24, 1928; and final order or redetermination adjudging that there was a deficiency as set forth above was entered August 29, 1929.

IV.

The said Commissioner being aggrieved by the conclusion of law made by the Board of Tax Appeals in said report, and also by said order of re-determination, desires to obtain a review of said report and order by the United States Circuit Court of Appeals for the Ninth Circuit; and as reason for such review he alleges that the Board in rendering its opinion and entering its final order of re-determination committed the following errors:

1. The Board erred in determining that there was a deficiency in the amount of the taxpayer's income and profits taxes for the year 1917 in the amount of only $35,806.30, and in failing to determine that there was a deficiency for said year in the amount of 128,610.36.

2. The Board erred in determining that the amount of $171,979.22, being the net income impounded in the hands of the receiver during the period February 2, 1916, to December 31, 1916, and received by the [122] taxpayer in 1917, is not an item of income for the year 1917.

3. The Board erred in holding that it was immaterial whether taxpayer's accounts were kept on the receipts and disbursement basis in respect to said amount of $171,979.22 received by the petitioner in 1917, which amount was impounded by the receiver in 1916.

4. The Board erred in determining that the receiver, appointed because of a suit by the United States, impounded net income in the amount of $171,979.22 in 1916, should have reported it for taxa-

tion, and not having reported it there is not sufficient reason for taxing the taxpayer in the later year.

5. The Board erred in determining as follows:

> "We think it immaterial whether petitioner's accounts were kept on the receipts and disbursements basis or some other basis as permitted by Section 13(d) of the Revenue Act of 1916. The fact is that the income was actually produced in 1916. The sole reason that it did not reach the petitioner in that year was because of the suit by the United States. By reason of that suit a receiver was appointed, who actually received the income, and who should have reported it for taxation. * * * If the receiver did not report it, that is no sufficient reason for taxing the petitioner on it in a later year. Accordingly, the amount of $171,979.22 received by petitioner in 1917 is not an item of income in that year."

WHEREFORE, the Commissioner petitions that said decision of the United States Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit; that a transcript of the record be prepared in accordance with the law and the rules of said court and be transmitted to the Clerk of said court for filing; [123] and that appropriate action be taken to the

end that the errors herein complained of may be reviewed and corrected by said court.

G. A. YOUNGQUIST.
G. A. YOUNGQUIST,
Assistant Attorney General.
C. M. CHAREST.
C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue.

United States of America,
District of Columbia,—ss.

C. M. Charest, being first duly sworn, says that he is General Counsel for the Bureau of Internal Revenue, and as such is duly authorized to verify the above and foregoing petition for review to the United States Circuit Court of Appeals for the Ninth Circuit; that he has read said petition for review; that he is familiar with the statements therein contained; and that the same are true to the best of his knowledge, information and belief.

C. M. CHAREST.
C. M. CHAREST.

Subscribed and sworn to before me this 13th day of February, 1930.

[Seal] WILFORD H. PAYNE,
Notary Public.

My commission expires November 5, 1932.

[124] United States Board of Tax Appeals.

DOCKET Nos. 8714–16,107.

ROBERT H. LUCAS, Commissioner of Internal Revenue,

Petitioner,

vs.

NORTH AMERICAN OIL CONSOLIDATED,

Respondent.

To North American Oil Consolidated, 544 Market Street, San Francisco, California.

Sirs:

You are hereby notified that the Commissioner of Internal Revenue did on the 13th day of February, 1930, file with the Clerk of the United States Board of Tax Appeals at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and assignments of error as filed is hereto attached and served upon you.

C. M. CHAREST,
F.
Attorney for Petitioner,
General Counsel,
Bureau of Internal Revenue.

Dated at Washington this 13th day of February, 1930.

Personal service of the above and foregoing notice, together with the copy of the petition for review and assignments of errors mentioned therein, is hereby acknowledged this 18th day of February, 1930.

NORTH AMERICAN OIL CONSOLIDATED,
Respondent.
By FRANK EVANS,
Secretary.

Now, November 6, 1930, the foregoing petition for review, notice of filing and proof of service certified from the record as a true copy.

[Seal] B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

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[125] United States Board of Tax Appeals.

DOCKET Nos. 8714–16,107.

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

NORTH AMERICAN OIL CONSOLIDATED,
Respondent.

STATEMENT OF EVIDENCE.

The above-entitled cause came on for hearing before the Hon. C. Rogers Arundell, Member of the United States Board of Tax Appeals upon the 2d day of May, 1927, there being present the petitioner and respondent by their respective counsel.

Thereupon the following proceedings were had and testimony heard by said Member. All of the evidence introduced by both parties to the above-entitled cause which is materially necessary to a determination of the assignments of error set out by petitioner in its petition for review by this Court of the decision of the Board of Tax Appeals is herein set forth. Except as the same are at variance with, or controverted by, this statement of evidence, the findings of fact made by the Board of Tax Appeals are accepted as correct and to that extent adopted for the purposes of this appeal.

The stipulation of facts agreed to by the parties before the Board of Tax Appeals is as follows:

"PETITIONER'S STIPULATION OF FACTS."

"It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys, that subject to the right of [126] either party to introduce admissible evidence not inconsistent herewith, the following may be taken and considered as facts in the trial of the above-entitled cause:

(1) That the Petitioner was organized on February 10th, 1910, under the laws of the State of California.

(2) That attached hereto as 'Exhibit A' is a true and correct copy of the minutes of the meeting of the Board of Directors of the North American Oil Consolidated held on February 10, 1910, and that said copy may be considered in evidence in lieu of the original minute book of said corporation.

(3) That the properties referred to in said minutes ('Exhibit A') were duly acquired by Petitioner on February 10, 1910, and its stock and bonds were on said date duly issued in exchange therefor in accordance with the authorization contained in said minutes.

(4) That attached hereto as 'Exhibit B' is a true and correct copy of the minutes of the meeting of the Board of Directors of the North American Oil Consolidated held on August 25, 1910, and that said copy may be considered in evidence in lieu of the original minute book of said corporation.

(5) That the properties referred to in said minutes ('Exhibit B') were duly acquired by Petitioner on August 25, 1910, and its stock and bonds and cash were on said date duly issued in exchange therefor in accordance with the authorization contained in said minutes.

(6) That attached hereto as 'Exhibit C' is a true and correct copy of the minutes of the meeting of the Board of Directors of the [127] North American Oil Consolidated held on May 27, 1912, and that said copy may be considered in evidence in lieu of the original minute book of said corporation.

(7) That the authorized capital stock of Petitioner was reduced in accordance with the authorization contained in the minutes of said meeting of the Board of Directors held on May 27, 1912.

(8) That the Respondent admits that the adjustment to invested capital of 'excess valuation of property $1,638,611.21,' shown on page 3 of the sixty day letter for 1917 dated September 28, 1925, and

on pages 2 and 5 of the sixty day letter for 1918 and 1919 dated April 9, 1926, should be reduced by the amount of $761,078.22, leaving a balance of $877,472.99 which the Respondent now alleges to be 'excess valuation of property,' instead of the aforesaid figure of $1,638,611.21.

(9) That said amount of $877,472.99 represents the difference between $1,500,000.00, the value at which the Petitioner's 480 acres in Section 16 was shown on its balance sheet as of December 31, 1916 (without any deduction for depletion sustained), and $622,527.01 the value at which the Respondent has included said 480 acres in said Section 16 in the Petitioner's invested capital (except for an additional $50,000.00 allowed in the aforesaid sixty day letter as 'Paid in Surplus Account Stock Sales,' and likewise without any deduction for depletion sustained).

[128] (10) That the value of $622,527.01 used by the Respondent as the value of Section 16 for invested capital purposes was arrived at by the respondent as shown on pages 5 and 6 of Revenue Agent's Report dated September 18, 1920, copies of which are attached hereto as 'Exhibits D and E,' for the purpose only of showing the Respondent's computation.

(11) That the cost of said lands in said Section 16, T. 32, S. R. 23 E., M. D. B. & M., which were acquired by the North American Oil Consolidated on February 10, 1910, as shown by 'Exhibit A' attached hereto, to the Hartford Oil Company and

Louis Titus Pool, predecessors of the North American Oil Consolidated, was as follows:

Section 16.

1. Hartford Oil Company, fee SE.¼ of SE.¼	$42,000.00
2. Hartford Oil Company, fee N.½ of SW.¼; W.½ of SE.¼; S.½ of NE.¼ of SE.¼; S.½ of SW.¼ of NE.¼; 5.5 acres of N.½ of SW.¼ of NE.¼	205,616.25
3. Hartford Oil Company, lease S.½ of SW.¼	10,000.00
4. Louis Titus Pool, fee S.½ of SW.¼	68,480.00
5. Louis Titus Pool, fee N.½ of NE.¼ of SE.¼	30,000.00
Total	$356,096.25

(12) The petitioner made payments as follows for the purpose of clearing title to a part of Section 16:

Spellacy, October 26, 1910	$ 2,500.00
Spellacy, March 20, 1911	40,000.00
	$42,500.00

[129] (13) The value of the lands acquired for stock in 1910 was not segregated on the books of the company so as to show the respective values of land in Sections 16, 22 and 26, until Section 22 was sold in 1915, when the following segregation of values was made upon the books of the company:

	Value
Section 16 property	$1,500,000.00
Section 22 property	900,000.00
Section 26 property	385,755.08
	$2,785,755.08

(14) That the Petitioner sold its interest in Section 22 in 1915 and its interest in Section 26 in 1916.

(15) That in computing the Petitioner's allowable deduction for depletion on said 480 acres in said Section 16, the Respondent has used a value of said lands in said Section 16 as of March 1, 1913, of $400,000.00 and an estimated oil content as of that date of 2,694,842 barrels.

(16) That the following is a true and correct statement of the production by months for the years 1910, 1911 and 1912 respectively of the North American Oil Consolidated from its property in Section 16, T. 32, S. R. 23 E., M. D. B. & M., Kern County, California:

Section 16.

Month	1910	1911	1912
January	3,979.88	6,301.83	57,441.80
February	6,203.80	5,035.98	47,871.28
March	5,053.50	26,464.20	47,003.88
April	9,003.30	34,292.94	49,136.51
May	12,864.03	44,219.63	49,344.37
June	8,837.67	42,234.54	49,267.63
July	7,527.68	41,504.31	49,600.40
August	6,426.13	41,309.70	48,743.02
September	7,748.44	41,466.42	49,619.18

October	8,924.63	45,819.81	44,088.26
[130]			
Month	1910	1911	1912
November	6,414.85	43,033.16	44,966.10
December	7,430.44	53,400.83	43,692.88
	90,414.35	425,083.35	580,775.31

(17) That the production by years, from Section 16 during the period from 1910 to 1919, both inclusive, was as follows:

Section 16.

Year.	Production in Bbls.
1910	90,414
1911	425,083
1912	580,775
1913 (1/1–3/1)	84,513
1913 (3/1–12/31)	308,828
1914	315,130
1915	193,832
1916	176,509
1917	144,675
1918	106,799
1919	103,500.

(18) That attached hereto as 'Exhibit F' is a true and correct copy of the corporation Income Tax Return filed by the Petitioner March 27, 1918, for the calendar year 1917.

(21) That attached hereto as 'Exhibit G' is a true and correct copy of the corporation Excess Profits Tax Return filed by the Petitioner on March 27, 1918, for the calendar year 1917.

(22) That the sixty day letter attached to the

petition for 1917 may be considered in evidence for the purpose of showing the basis for computing the deficiency therein asserted.

(23) That the sixty day letter attached to the petition for 1918 and 1919 may be considered in evidence for the purpose of showing the basis for computing the deficiency therein asserted.

[131] (24) That attached hereto as 'Exhibit H' is a true and correct copy of a contract dated January 1, 1916, by and between North American Oil Consolidated as Party of the First Part and Chas. S. Wheeler and John F. Bowie (co-partners), Attorneys at Law, as Parties of the Second part, and that said copy may be considered in evidence in lieu of the original.

(25) That the following amounts, which represent 4% of the gross production from Section 2 sold in 1917, 1918 and 1919 respectively, were turned over to Messrs. Wheeler and Bowie, in accordance with the contract dated January 1st, 1916, a copy of which is attached hereto as 'Exhibit H':

Year	Proceeds
1917	$20,441.18
1918	21,730.60
1919	27,136.91.

(26) That in the return for 1917 the sum of $35,795.54 was deducted on account of said contract with Messrs. Wheeler & Bowie, said amount representing accruals for both 1916 and 1917.

(27). That in the return for 1918, the sum of $21,730.60 was deducted on account of said contract with Messrs. Wheeler & Bowie.

(28) That in the return for 1919, the sum of $27,136.91 was deducted on account of said contract with Messrs. Wheeler & Bowie.

(Signed) CHARLES D. HAMEL,
LEE I. PARK,
Attorneys for Petitioner.
(Signed) A. W. GREGG,
AGB.,
Attorney for Respondent."

[132] "RESPONDENT'S STIPULATION OF FACTS.

"(1) The Petitioner acquired Section 2, T. 32 S. R. 23 E., M. D. B. & M., Kern County California, by purchase on July 15, 1913.

(2) That there is attached hereto as 'Exhibit 1' true and correct copy of Patent issued by the United States on April 12th, 1922, to all of Section 2 in T. 32 S. R. 23 E., M. D. B. & M., and it is stipulated that the same may be considered in evidence with the same force and effect as the original thereof.

(3) That attached hereto as 'Exhibit 2' is a true and correct copy of the order appointing a Receiver in the case of the United States of America vs. North American Oil Consolidated, and others, Equity A–48, in the District Court of the United States for the Southern District of California, Northern Division, and that such copy may be considered in evidence in lieu of the original.

(4) That attached hereto as 'Exhibit 3' is a true and correct copy of the final decree, dated June 5,

1917, in the case of the United States of America vs. North American Oil Consolidated and others, Equity A–48, in the District Court of the United States for the Southern District of California, Northern Division, and that such copy may be considered in evidence in lieu of the original.

(5) That attached hereto as 'Exhibit 4' is a true and correct copy of Mandate from the United States Supreme Court to the United States Circuit Court of Appeals for the Ninth Circuit, in the case of United States of America vs. North American Oil Consolidated and others, and that said copy may be considered in evidence in lieu of the original.

[133] (6) That at all times during said Receivership said Section 2 was in the physical possession of and operated by North American Oil Consolidated.

(7) That at all times during said Receivership the income from oil produced on said Section 2 was entered on the books of the North American Oil Consolidated as its income.

(8) That attached hereto as 'Exhibit 5' is the original corporation income tax return filed by the North American Oil Consolidated on February 27, 1917, for the calendar year 1916, with leave to respondent to withdraw the original and substitute photostatic copy.

(9) That attached hereto as 'Exhibit 6' is the amended corporation income tax return filed by the North American Oil Consolidated on March 27, 1918, for the calendar year 1916, with leave to

respondent to withdraw the original and substitute photostatic copy.

(10) That the net income impounded in the hands of the Receiver from Section 2, T. 32 S. R. 23 E. M. D. B. & M., Kern County, California, during the period from February 2, 1915, to December 31, 1916, and released in June, 1917, by the final decree of the United States District Court for the Southern District of California, Northern Division, vacating the order appointing the Receiver, was $171,979.22, of which $10,126.04 was turned over to Messrs. Wheeler and Bowie in accordance with the terms of the contract dated January 1, 1916, between petitioner and said Messrs. Wheeler and Bowie, a copy of said contract being attached to Petitioner's Stipulation of Facts as 'Exhibit H.'

[134] (11) That attached hereto as Exhibits 7, 8, 9, 10 and 11 are income and profits tax waivers for the calendar year 1917, filed by the North American Oil Consolidated, petitioner herein, with the Commissioner of Internal Revenue on January 26, 1923, January 10, 1924, January 17, 1924, December 22, 1924, and December 2, 1925, respectively, and that said copies may be received in evidence in lieu of the originals.

(12) That in computing petitioner's invested capital and depletion allowances for the years 1917, 1918 and 1919, the Commissioner added to the capital sum remaining in 1916, as shown in copy of Valuation Report dated July 30, 1925, and attached hereto as Exhibit 12 the sum of $287,687.03 representing the capitalized cost of wells developed on

Section 16, T. 32 S. R. 23 E., during the year 1916; that said sum of $287,687.03 was expended by petitioner in drilling wells during the years 1910 and 1911 as follows: $51.727.64 in the year 1910 and $235,959.39 in the year 1911; and that said sums should have been added to the capital count during the years 1910 and 1911 instead of during the year 1916. Copy of Valuation Report dated July 30, 1925, attached hereto and marked Exhibit 12, is hereby stipulated in evidence solely for the purpose of showing respondent's computation of invested capital and depletion allowances.

(Signed) CHARLES D. HAMEL,
LEE I. PARK,
Attorneys for Petitioner.
(Signed) A. W. GREGG,
A. G. B.,
Attorney for Respondent."

[135] Following receipt of the foregoing stipulations in evidence, Exhibits 5, 6, and "F," were offered and received in evidence, copies of the same being hereto attached and made a part of this statement of evidence as if fully set forth herein. The foregoing is all of the evidence deemed material to this appeal and introduced in this cause.

The petitioner, Commissioner of Internal Revenue, tenders and presents the foregoing as a statement of the evidence in this case and prays that the same may be approved by the United States Board of Tax Appeals and made a part of the record in this case.

C. M. CHAREST.

F.

C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue.

The foregoing statement of evidence is approved this 23d day of October, 1930.

C. ROGERS ARUNDELL,
Member, United States Board of Tax Appeals.

ERC:LLD
10/11/30

United States of America

Treasury Department

May 25, 1917.

Pursuant to Section 882 of the Revised Statutes, I hereby certify that the annexed are true copies of "Original" and "Amended" Corporations Returns of Annual Net Income for the year ended December 31, 1916, filed by North American Oil Consolidated, San Francisco, California; Letter dated March 23, 1918 to Justus S. Marshall, Esq., Collector of Internal Revenue, San Francisco, California, from North American Oil Consolidated, on file in this Department.

In witness whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary.

Chief
Assistant Secretary.

TREASURY DEPARTMENT

TO BE FILLED IN BY INTERNAL REVENUE BUREAU.

Audited by .....

In .....

Form 1031.
(Revised October, 1916.)

INCOME TAX.

THE PENALTY

FOR FAILURE TO HAVE THIS RETURN IN THE HANDS OF THE COLLECTOR OF INTERNAL REVENUE WITHIN THE TIME REQUIRED BY LAW IS NOT MORE THAN $10,000 AND THE ASSESSMENT IS INCREASED FIFTY PER CENT.

RETURN OF ANNUAL NET INCOME

(Title I, Parts II and III, of the Act of September 8, 1916.)

CORPORATIONS.

(OTHER THAN INSURANCE COMPANIES.)

TO BE FILLED IN BY COLLECTOR.

Collection District .....

Assessment List 23-1 ..... (Month) ....., 1917.

Page ..... Line .....

IMPORTANT.

Read this form and all instructions carefully and fill in supplementary statement before making entries in return proper. Totals in supplementary statement must agree with totals in return.

Above space to be stamped by Collector, showing district and date filed.

RETURN OF NET INCOME for the { Calendar / Fiscal } year ended ....., 191.

by ..... (Name of corporation, joint-stock company, or association.) ....., (Kind of business.)

and located at ..... (Street and number.) ....., ... (City or town.) ....., ... (State.)

(The address given must be that of the principal place of business of the corporation.)

If no figures are to be extended opposite any item in the return, the word "None" should be inserted.

1. Total amount of paid-up capital stock outstanding at the close of the year, or if no capital stock, the capital, other than interest-bearing indebtedness, employed in the business at the close of the year ..... $

2. Total amount of bonded and other interest-bearing indebtedness outstanding at close of year, exclusive of indebtedness wholly secured by collateral, the subject of sale or hypothecation in ordinary business of the corporation ..... $

GROSS INCOME:	Dollars.	Cts.
(a) From operations	$	
(b) From rentals		
(c) From interest		
(d) From dividends received		
(e) From other sources		
Total gross income	$	
Total deductions		
Net income	$	
Tax at 2%	$	
	$	
	$	

DEDUCTIONS.	Dollars.	Cts.
4. (a) Expenses, general	$	
(b) Payments in lieu of rent		
5. (a) Losses sustained charged off		
(b) Depreciation charged off		
(c) Depletion charged off		
6. (a) Interest paid (see Note 6a)		
(b) Interest paid by banks on deposits		
7. (a) Taxes, domestic paid		
(b) Taxes, foreign paid		
Total deductions	$	

I, ..., President (or other officer) of the ....., being severally duly sworn, each for himself, deposes and says that the statements contained in the supplementary statement and in any additional list or lists attached hereto or accompanying same, are, to the best of his knowledge and belief, true and correct in each and every particular.

Subscribed and sworn before me this ..... day of ....., 191.

.....
(Official capacity.)

.....
President.

.....
Treasurer.

GENERAL INSTRUCTIONS.

Returns made on the basis of a calendar year must be filed on or before March 1 with the Collector of Internal Revenue at the district in which is located the principal place of business of the corporation; if made on the basis of a FISCAL YEAR they must be filed within 60 days after the close of such year.

Any corporation desiring to make returns of annual net income on the basis of a fiscal year other than the calendar year must, not less than 30 days prior to the time when the return would be due if made on the calendar year basis, file with the Collector a notice in writing designating the last day of some month as the close of its fiscal year. A return for that portion of the calendar year ending with the date designated as the close of the fiscal year must be filed on or before the sixtieth day thereafter, and the return for each full fiscal year thereafter must be filed within 60 days after the closing date of the fiscal year so established.

Collectors may, in the case of neglect to file the return within the prescribed time, the Collector is authorized to grant an extension of the filing period not exceeding thirty days, provided such neglect was due to absence or sickness and provided an application for such extension is made in writing prior to the expiration of the time for which extension may be granted. In meritorious cases the Commissioner is authorized to grant such further extension as he may deem proper.

Signature.—Returns must be signed and verified by two officers of the corporation, that is, by the president, vice president, or other principal officer, and by the treasurer or other financial officer, and must be sworn to before an officer authorized to administer oaths, and the seal of the attesting officer, if he is required to have one, affixed on the return in the space provided for that purpose.

Subsidiary companies.—The corporation making this return should attach hereto a list of all its subsidiary companies, if any, with the location of the principal place of business of each. Each subsidiary company must make a separate and distinct return.

Foreign corporations.—Foreign corporations subject to the law are required to make returns to the Collector of the District in which is located the principal place of business or agency through which is transacted the business in the United States, or if the corporation has no place of business or agency in the United States, its return will be made to the Collector of Internal Revenue at Baltimore, Maryland. The gross income to be returned is that received from business transacted and capital invested in the United States, including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, and including income derived from dividends on the stock or from net earnings of resident corporations, joint-stock companies, or associations whose net income is taxable under this law. The deductions allowable are those actually paid within the year and necessary to the transaction of the business in this country, all as specifically set out in the Act. Foreign taxes are not deductible from gross income arising and accruing to a foreign corporation from business done or capital invested in the United States. In the case of a foreign corporation having no place of business or agency in the United States and no return is made, the tax on income from interest and dividends will be withheld at the source.

Penalties.—Corporations refusing or neglecting to file returns within the time prescribed by law or rendering false or fraudulent returns shall be liable to a penalty of not more than $10,000, and an additional tax of 50 per cent in case of neglect to file the return within the time prescribed by law, and 100 per cent in the case of a false or fraudulent return. The penalty provided in case of delinquency, if the return is voluntarily filed without notice from the Collector, and it is shown that

(Street and number.) (City or town.) (State.)

(The address given must be that of the principal place of business of the corporation.)

If no figures are to be extended opposite any item in the return, the word "None" should be inserted.

1. Total amount of paid-up capital stock outstanding at the close of the year, or if no capital stock, the capital, other than interest-bearing indebtedness, employed in the business at the close of the year ..... $

2. Total amount of bonded and other interest-bearing indebtedness outstanding at close of year, exclusive of indebtedness wholly secured by collateral, the subject of sale or hypothecation in ordinary business of the corporation ..... $

GROSS INCOME:	Dollars.	Cts.
(a) From operations	$	
(b) From rentals		
(c) From interest		
(d) From dividends received		
(e) From other sources		
Total gross income	$	
Total deductions		
[illegible]	$	
[illegible] at 2%	$	
	$	
	$	

DEDUCTIONS.	Dollars.	Cts.
4. (a) Expenses, general	$	
(b) Payments in lieu of rent		
5. (a) Losses sustained charged off		
(b) Depreciation charged off		
(c) Depletion charged off		
6. (a) Interest paid (see Note 6a)		
(b) Interest paid by banks on deposits		
7. (a) Taxes, domestic paid		
(b) Taxes, foreign paid		
Total deductions	$	

[illegible] of the [illegible] of [illegible], being duly sworn, each for himself, deposes and says that [illegible] contained in the supplementary statement and in any additional list or lists attached to or accompanying [illegible] is, to the best of [illegible] knowledge and belief, true and correct in each and every particular.

Subscribed before me this 26th day of February, 1917

C. B. Tennilons
Notary Public.
(Official capacity.)

J. E. Kinneff, Vice President.

C. F. Nauss, Secretary or Treasurer.

GENERAL INSTRUCTIONS.

Returns made on the basis of a calendar year must be filed on or before March 1 with the Collector of Internal Revenue of the district in which the principal office of business of the corporation; if made on the basis of a FISCAL YEAR they must be filed within 60 days after the close of such year.

If the return is to be made on a fiscal year other than the calendar year, not less than 30 days prior to the time when the return would be due if made on the calendar year basis, file with the Collector a notice in writing designating the last day of some month as the close of the fiscal year. A return for that portion of the calendar year ending with the date designated as the close of the fiscal year must be filed on or before the sixtieth day after the close of such fiscal year, and the return for each full fiscal year thereafter must be filed within 60 days after the closing date of the fiscal year so established.

In the case of neglect to file the return within the prescribed time, the Collector is authorized to grant an extension of the filing period not exceeding thirty days, provided such neglect was due to absence or sickness and provided an application for such extension is made in writing prior to the expiration of the time for which extension may be granted. In meritorious cases the Commissioner is authorized to grant such further extension as he may deem proper.

Signatures.—Returns must be signed and verified by two officers of the corporation, that is, by the president, vice president, or other principal officer, and by the treasurer or other financial officer, and must be sworn to before an officer authorized to administer oaths, and the seal of the attesting officer, if he is required to have a seal, affixed on the return in the space provided for that purpose.

Subsidiary companies.—The corporation making this return should attach hereto a list of all its subsidiary companies, if any, with the location of the principal place of business of each. Each subsidiary company must make a separate and distinct return.

Foreign corporations.—Foreign corporations subject to the law are required to make returns to the Collector of the District in which is located the principal place of business through which is transacted the business in the United States, or if the corporation has no place of business or agency in the United States, its return will be made to the Collector of Internal Revenue at Baltimore, Maryland. The gross income to be returned is that received from business transacted and capital invested in the United States, including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, and including income derived from dividends on stock of corporations, and from the earnings of resident corporations, joint-stock companies, or associations whose net income is taxable under this law. The deductions allowable are those only which are actually paid and necessary to the transaction of the business in this country, all as specifically set out in the Act. Foreign taxes are not deductible from gross income arising and accruing to a foreign corporation from business done or capital invested in the United States. In the case of a foreign corporation having no place of business or agency in the United States and no return is made, the tax on income from interest and dividends will be withheld at the source.

Penalties.—Corporations refusing or neglecting to file returns within the time prescribed by law or rendering false or fraudulent returns shall be liable to a penalty of not less than $1,000, and an additional tax of 50 per cent in case of neglect to file the return within the time prescribed by law, and 100 per cent in the case of a false or fraudulent return, which sum shall be added to the assessment; provided in case of delinquency, if the return is voluntarily filed without notice from the Collector, and it is shown that the delay was due to reasonable cause and not to willful neglect, the 50 per cent additional tax will not be assessed.

Any officer of any corporation required by law to make, render, sign, or verify any return, who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required to be made shall be guilty of a misdemeanor, and shall be fined not exceeding $2,000 or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

SUPPLEMENTARY STATEMENT.

The following information must be furnished by every corporation, joint-stock company, or association, without which the return will not be accepted as complete. The items herein relate to the items listed in the above return form and bear corresponding numbers, and the totals set out in the above return must agree with the totals hereinafter set out.

1. PAID-UP CAPITAL STOCK:

Unissued or treasury stock should not be included in this item, but only such stock as has been actually issued and is outstanding at the close of the year and for which payment has been received. Where the stock issued is payable in installments or assessments, only so much of it as has been actually paid in upon such installments or assessments should be reported.

If no capital stock is issued or if the capital stock is issued without par value, the amount of capital invested in the business at the close of the year, not including borrowed capital, will be entered under this item.

(a) Paid-up "common stock" .....

(b) Paid-up "preferred stock" .....

Total paid-up stock .....

or (c) Capital employed in business .....

2. INDEBTEDNESS:

All interest bearing indebtedness for the payment of which the corporation or its property is bound, should be reported below. In the case of banking corporations and like financial institutions, deposits should not be reported as indebtedness. Indebtedness wholly secured by collateral, the subject of sale or hypothecation in the ordinary business of the corporation, should be reported here, but such indebtedness must not be entered under Item 2 above nor be considered in determining the amount of interest deductible under Item 6 (a).

Character of obligation.	Rate of interest.	Principal.

a-2 . a

SUPPLEMENTARY STATEMENT

4. Gross Income:

All manufacturing, mercantile, or other corporations which ... gain or loss by inventory are required to state the ... gross annual income or loss is determined otherwise. ... stated in the space provided therefor. In case the annual gain ... inventory, merchandise must be inventoried at the cost price ... will ultimately be reflected in the sales during the year which ... closed.

(a) Gross Operations:

For Inventory—

Sales during year	$		
Stock on hand at close of year			
Total			$
Purchases during year	$		
Stock on hand at beginning of year			
Total			$
Total gain or loss [5 (a), first page]			$

In the case of manufacturing corporations, "Purchases during the year" will ... in stock of the cost of goods, finished or unfinished, sold or unsold, as has ... been improperly deducted under any item of the return. ... Overhead charges should not be included in inventory (see item 6).

If inventory shows loss, make entry in red ink or strike out "gain".

If inventory is not used, state below method of determining gain or loss from ... Total sales of coal for year

If the sale of capital assets acquired prior to March 1, 1913, the profit or ... determined will be the difference between the fair market value of such ... March 1, 1913, and the price at which they are sold. If acquired subse- ... 1913, then the profit or income to be returned is the difference ... and the selling price.

In case of the sale of capital acquired prior to March 1, 1913, state—

(1) Original cost of assets ..... $

(2) Fair market price or value as of March 1, 1913 .....

(3) Sales which assets were sold .....

State how the fair market price or value as of March 1, 1913, was determined:

(b) Interest will include all payments received in cash or its ... other property owned by the corporation making ... received.

Dividends includes all interest received on bonds or securi- ... with the exception of interest on obligations of a State ... or interest upon the obligations of the United States ... interest for the purpose of information should be ...

(c) Rents and other collections.

	Amount of principal.	Rate.	Amount of interest received.
	$		$
	$		$

... to be made by a corporation out of its earnings ... shares in each year of the paying corp- ... and such sums value is held to be the proportionate ... the paying corporation since March 1, 1913, as is ... declared or ordered to be distributed to the receiving ...

... from which income has been received, and the amount thereof.

	$		
	$		

... includes only the ordinary and necessary expenses paid within the ... maintenance and operation of the business and properties of the corpora- ... for unpaid salaries, rent will not include any disbursements to the ... is specifically provided for in the return form proper on the obverse ...

... indebtedness wholly secured by property collateral the subject of ... in the ordinary business of the corporation as a dealer only in ... securities made collateral or in the issuing of funds thereby produced. ... deduction as a business expense to an amount of the interest paid on ... not in excess of the actual value of the collateral securing it.

... of material, labor, fuel, and other items entering into the cost of ... sold, or investments are deductible under this head as expenses. ... such items have not been considered in determining the cost or purchase ... when the income derived from operations is ascertained through an ... as set out in Item 5 (a) of this statement.

... the incidental repairs which do not add to the value or appreciably ... life of property are deductible as expenses, but expenditures for new ... permanent improvements or betterments which increase the value of prop- ... restoring or replacing property, are not deductible under this or any other ... return. Such expenditures are properly chargeable to capital account, to ... through annual depreciation allowances.

... made to officers or employees who are stockholders, which payments are ... in the form of salaries or compensation and the amount of which is based upon ... services of such officers or employees, are not deductible as a business ...

... $

... $ 1913 Gross ...

... $1,000 per year ... per cent for 1916) on the ... which case the tax ... exemption claimed. The tax so ... together with all certificates of ... later than March 1.

Notwithstanding the withholding of the tax at ... individual receiving income from ... $3,000 must also make returns on Form 1040.

(d) Payments in Lieu of Rent.

This item should include all royalties and other charges, including any interest ... which the corporation is required to make for the right to use and possess ... property in which it has no title, interest, or equity. See Note 6 (a).

(e) Losses.

Losses deductible under this item must be distinguished from depreciation or ... allowances for exhaustion, wear and tear. The losses must be absolute, complete, ... actually sustained during the year and charged off on the books of the corporation, ... and if the losses result from the sale of assets acquired prior to March 1, 1913, such ... losses shall be ascertained by taking the difference between the fair market price or ... value as of March 1, 1913, and the selling price.

Losses compensated by insurance or otherwise are not deductible.

Kind of asset	Original amount.	Date charged off.	Amount charged off.
Loss on sale of coal lands	$ 75,000.00	Dec. 31, 1916	$ 3,000.00
Loss on sale of machinery			
Loss on sale of auto truck			
Total			$ 3,000.00

When were the deducted losses ascertained to be such? December 31, 1916

How were they so ascertained? Sold for less than cost after taking inventory

In case of losses resulting from the sale of capital assets acquired prior to March 1, 1913, state—

(1) Original cost of assets ..... $ 75,000.00

(2) Fair market price or value as of March 1, 1913 ..... $ 60,000.00

(3) Loss resulting from such sale ..... $ 15,000.00

State also how the fair market price or value as of March 1, 1913, was determined: Cost less depreciation, which deduction charged off

(b) Depreciation:

The amount deductible on account of depreciation is ... fairly measures the loss during the year in the value ... of exhaustion, wear and tear. Such amount should be ... the cost of the property and the probable number ... Stocks, bonds, and like securities, as well as any ... subject to exhaustion, wear and tear within the ... amount charged off as representing a shrinkage in ... deductible either as depreciation or loss.

Depreciation computed on total previous ... allowable deduction, since any loss due to ... merchandise will be reflected in the sales or ...

Kind of property.	Its cost.	Probable life ...
Power Buildings	$ 15,000.00	40 years
Power plant & Equip.	11,000.00	8 "
Power Pipe & Equip.	11,250.00	8 "
Total	$ 37,250.00	

If buildings, state kind of construction.

(c) Depletion:

Depletion applies to the exhaustion of natural ... tion to return to the corporation the capital ... March 1, 1913, as amount modified by return ... of such deposits as of that date. As ...

... property ... for depletion based ... acquired upon the basis of the decision in ... deducted on this account must be charged off ...

Kind of property.	Its cost if acquired subsequent to March 1, 1913.	If not acquired after March 1, 1913, its fair market value as of March 1, 1913.
Coal	$ 1,200,000.00	$ 1,125,000.00

*Coal, iron ore, copper, oil, or gas.

†State how fair market value as of March 1, 1913, was ascertained.

Cost less depletion charged off

5. (a) Interest Deductible:

The amount of interest deductible under this head is the amount actually paid within the year on an amount of bonded or other indebtedness not exceeding ... paid-up capital stock outstanding at the close of the year, ... effective amount of capital (not including interest-bearing indebtedness) employed in the business at the close of the year, plus, in each case, outstanding ... interest-bearing indebtedness also then outstanding.

Capital employed in the business, as here used, means ... paid in by the members of the company, including no part of the indebtedness ... as is not in excess of the needs of the business, but does not include any borrowed capital or interest-bearing indebtedness.

Interest, so-called, or dividends paid upon preferred capital stock is not deductible.

Interest deductible under this item includes all interest actually paid within the year not in excess of the limit hereinbefore indicated on any debt for which the corporation or any property in which it has title, interest, or equity is pledged, except interest on indebtedness wholly secured by collateral the product of sale or hypothecation in the ordinary business of the company, etc., which interest is deductible under Item 4 (b) as a business expense.

INTEREST PAYMENTS ACTUALLY MADE DURING YEAR.

All forms of indebtedness upon which interest was paid should be listed here.

Name or kind of obligation.	Amount of principal.	Date of interest.	Amount of interest paid.
	$		$

(If inventory shows loss, make entry in red ink or strike out "gain.")

If inventory is not used, state below method of determining gain or loss from sales:

Total sales of coal for year

(a) In the sale of capital assets acquired prior to March 1, 1913, the profit or loss is to be the difference between the fair market value of such assets on March 1, 1913, and the price at which they are sold. If acquired subsequent to March 1, 1913, then the profit or income to be returned is the difference between the cost and the selling price.

(b) In case of the sale of capital acquired prior to March 1, 1913, state—

(1) Original cost of assets.....

(2) Fair market price or value as of March 1, 1913.....

(3) Date which assets were sold.....

State also how the fair market price or value as of March 1, 1913, was determined:

.....

.....

.....

TO BE FILED IN INTERNAL REVENUE BUREAU

Form 1031

TO BE FILLED IN BY COLLECTOR

INCOME TAX.

THE PENALTY

FOR FAILURE TO HAVE THIS RETURN IN THE HANDS OF THE COLLECTOR OF INTERNAL REVENUE WITHIN THE TIME REQUIRED BY LAW IS NOT MORE THAN $10,000 AND THE ASSESSMENT IS INCREASED FIFTY PER CENT

RETURN OF ANNUAL NET INCOME.

(Title I, Parts II and III, of the Act of September 8, 1916.)

IMPORTANT.

Read this form and all instructions carefully and fill in supplementary statement before making entries in return proper. Totals in supplementary statement must agree with totals in return.

Above space to be filled in by Collector, showing disposition and date filed.

CORPORATIONS.

(OTHER THAN INSURANCE COMPANIES.)

Amended RETURN OF NET INCOME for the Calendar / Fiscal year ended , 191

by (Name of corporation, joint-stock company, or association) , (Kind of business.)

and located at (Street and number) (Town) (State.)

(The address given must be that of the principal place of business of the corporation.)

If no figures are to be extended opposite any item in the return, the word "None" should be inserted.

		Dollars	Cts.
1. Total amount of paid-up capital stock outstanding at the close of the year, or if no capital stock, the capital, other than interest-bearing indebtedness, employed in the business at the close of the year	$	1 [illegible]	50.
2. Total amount of bonded and other interest-bearing indebtedness outstanding at close of year, exclusive of indebtedness wholly secured by collateral, the subject of sale or hypothecation in ordinary business of the corporation	$	[illegible]	

3. Gross income:	Dollars	Cts.
(a) From operations	$ [illegible]	
(b) From rentals	[illegible]	
(c) From interest	[illegible]	
(d) From dividends received	[illegible]	
(e) From other sources	[illegible]	
Total gross income	$ [illegible]	
Total deductions	[illegible]	
3. Net income	$ 27 598 14	
3a. Tax assessable at 2%	$ [illegible]	
	$ [illegible]	
Total	$ [illegible]	

DEDUCTIONS.	Dollars	Cts.
4. (a) Expenses, general	$ 126 402	16
(b) Payments in lieu of rent	15 800	00
5. (a) Losses sustained charged off	102 240	73
(b) Depreciation charges off	64 716	26
(c) Depletion charged off	12 2 20	76
6. (a) Interest paid (see Note 6a)	44 222	07
(b) Interest paid by banks on deposits	None	
7. (a) Taxes, domestic paid	7 197	95
(b) Taxes, foreign paid	None	
Total deductions	$ 44 3 196	19

[illegible], President, and [illegible], Treasurer, of the [illegible] whose return of net income is herein set forth, being severally duly sworn, each for himself, deposes and says that he has examined the foregoing report and in the supplementary statement and in any additional list or lists attached to or accompanying the same, to the best knowledge and belief, true and correct in each and every particular.

Subscribed and sworn to before me this 26th day of March, 191[illegible]

D. D. Brown

(Official capacity.)

President.

C. F. [illegible] Secretary.
Treasurer.

GENERAL INSTRUCTIONS.

Time of filing returns.—Returns made on the basis of a calendar year must be filed on or before March 1 with the Collector of Internal Revenue of the district in which is located the principal place of business of the corporation; if made on the basis of a FISCAL YEAR* they must be filed within 60 days after the close of such year.

Corporations desiring to make returns of annual net income on the basis of a fiscal year other than the calendar year must, not less than 30 days prior to the time when the return would be due if made on the calendar year basis, file with the Collector a notice in writing designating the last day of some month as the close of their fiscal year. A return for that portion of the calendar year ending with the date designated as the close of the fiscal year must be filed on or before the [illegible] of the next calendar year, and the return for each full fiscal year thereafter must be filed within 60 days after the closing date of the fiscal year so established.

Extension of time.—In the case of neglect to file the return within the prescribed time, the Collector is authorized to grant an extension of the filing period not exceeding [illegible] from the normal due date, provided such neglect was due to sickness and provided an application for such extension is made in writing prior to the expiration of the period for which extension may be granted. In meritorious cases the Commissioner is authorized to grant such further extension as he may deem proper.

Signature and verification.—Returns must be signed and verified by two officers of the corporation, that is, by the president, vice president, or other principal officer, [illegible] or other financial officer, and must be sworn to before an officer authorized to administer oaths, and the seal of the attesting officer, if he is required to have [illegible] affixed on the return in the space provided for that purpose.

Consolidated returns.—The corporation making this return should attach hereto a list of all its subsidiary companies, if any, with the location of the principal place of business of each. Each subsidiary company must make a separate and distinct return.

Foreign corporations.—Foreign corporations subject to the law are required to make returns to the Collector of the District in which is located the principal place of business or agency through which is transacted the business in the United States, or if the corporation has no place of business or agency in the United States, its return will be filed with the Collector of Internal Revenue at Baltimore, Maryland. The gross income to be returned is that received from business transacted and capital invested in the United States, including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, and including income derived from dividends on capital stock or from net earnings of resident corporations, joint-stock companies, or associations whose net income is taxable under this law. The deductions allowable are those taxes and disbursements incident and necessary to the transaction of the business in this country, all as specifically set out in the Act. Foreign taxes are not deductible from the gross income arising and accruing to a foreign corporation from business done or capital invested in the United States. In the case of a foreign corporation having no place of business or agency in the United States and no return is made, the tax on income from interest and dividends will be withheld at the source.

Penalties.—Corporations refusing or neglecting to file returns within the time prescribed by law or rendering false or fraudulent returns shall be liable to a penalty of not [illegible] and an additional tax of 50 per cent in case of neglect to file the return within the time prescribed by law, and 100 per cent in the case of a false or fraudulent return shall be added to the assessment; provided in case of delinquency, if the return is voluntarily filed without [illegible] Collector, and it is shown that [illegible] reasonable cause and not to willful neglect, the 50 per cent additional tax will not be assessed.

[illegible] any false, fictitious, or fraudulent return or statement with intent to defeat [illegible] shall be fined not exceeding $2,000 or be imprisoned not exceeding one year, or both.

Office located at Fish Market Block, Norfolk, Virginia

(Street and number) (City or town) (State.)

(The address given must be that of the principal place of business of the corporation.)

If no figures are to be extended opposite any item of the return, the word "None" should be inserted.

1. Total amount of paid-up capital stock outstanding at the close of the year, or if no capital stock, the capital, other than interest-bearing indebtedness, employed in the business at the close of the year	$	1,000,000.00
2. Total amount of bonded and other interest-bearing indebtedness outstanding at close of year, exclusive of indebtedness wholly secured by collateral, the subject of sale or hypothecation in ordinary business of the corporation	$	600,000.00

3. GROSS INCOME:	Dollars	Cts.	DEDUCTIONS.	Dollars	Cts.
(a) From operations	$ 1,146,111	71	4. (a) Expenses, general	$ 126,403	14
(b) From rentals	2,796	75	(b) Payments in lieu of rent	15,600	00
(c) From interest	2,244	67	5. (a) Losses sustained charged off	102,240	73
(d) From dividends received			(b) Depreciation charged off	64,716	36
(e) From other sources	2,349	40	(c) Depletion charged off	123,206	20
Total gross income	$ 1,153,602		6. (a) Interest paid (see Note 6a)	113,222	07
Total deductions	1,153,602		(b) Interest paid by banks on deposits	None	
8. Net income	$ 27,592	14	7. (a) Taxes, domestic paid	7,107	05
9. Tax assessable at 2%	$		(b) Taxes, foreign paid	None	
	$		Total deductions	$ 1,153,196	19
Total	$				

[illegible], President, and [illegible], Treasurer, of the [illegible], whose return of net income is herein set forth, being severally duly sworn, each for himself, deposes and says that he has examined the foregoing report and in the supplementary statement and in any additional list or lists attached to or accompanying the same, to the best knowledge and belief, true and correct in each and every particular.

Sworn to and subscribed before me this 26th day of March, 1917

[illegible]

(Official capacity.)

[illegible]
President.

[illegible]
Secretary-Treasurer.

GENERAL INSTRUCTIONS.

Time of filing returns.—Returns made on the basis of a calendar year must be filed on or before March 1 with the Collector of Internal Revenue of the district in which is located the principal place of business of the corporation; if made on the basis of a FISCAL YEAR* they must be filed within 60 days after the close of such year.

Fiscal years.—Corporations desiring to make returns of annual net income on the basis of a fiscal year other than the calendar year must, not less than 30 days prior to March 1 of the year in which the return would be due if made on the calendar year basis, file with the Collector a notice in writing designating the last day of some month as the close of such fiscal year. A return for that portion of the calendar year ending with the date designated as the close of the fiscal year must be filed on or before the fifteenth day of the next calendar year, and the return for each full fiscal year thereafter must be filed within 60 days after the closing date of the fiscal year so established.

Extension of time.—In the case of neglect to file the return within the prescribed time, the Collector is authorized to grant an extension of the filing period not exceeding thirty days from the normal due date, provided such neglect was due to absence or sickness and provided an application for such extension is made in writing prior to the expiration of the period for which extension may be granted. In meritorious cases the Commissioner is authorized to grant such further extension as he may deem proper.

Signature and verification.—Returns must be signed and verified by two officers of the corporation, that is, by the president, vice president, or other principal officer, and by the treasurer or other financial officer, and must be sworn to before an officer authorized to administer oaths, and the seal of the attesting officer, if he is required to have a seal, must be affixed to the return in the space provided for that purpose.

Subsidiary corporations.—The corporation making this return should attach hereto a list of all its subsidiary companies, if any, with the location of the principal place of business of each. Each subsidiary company must make a separate and distinct return.

Foreign corporations.—Foreign corporations subject to the law are required to make returns to the Collector of the District in which is located the principal place of business or agency through which is transacted the business in the United States, or if the corporation has no place of business or agency in the United States, its return will be rendered to the Collector of Internal Revenue at Baltimore, Maryland. The gross income to be returned is that received from business transacted and capital invested in the United States, including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, and including income derived from dividends on capital stock or from net earnings of resident corporations, joint-stock companies, or associations whose net income is taxable under this law. The deductions allowable are those expenses and disbursements incident and necessary to the transaction of the business in this country, all as specifically set out in the Act. Foreign taxes are not deductible from the gross income arising and accruing to a foreign corporation from business done or capital invested in the United States. In the case of a foreign corporation having no place of business or agency in the United States and no return is made, the tax on income from interest and dividends will be withheld at the source.

Penalties.—Corporations refusing or neglecting to file returns within the time prescribed by law or rendering false or fraudulent returns shall be liable to a penalty of not exceeding $5,000, and an additional tax of 50 per cent in case of neglect to file the return within the time prescribed by law, and 100 per cent in the case of a false or fraudulent return shall be added to the assessment, provided in case of delinquency, if the return is voluntarily filed without notice from the Collector, and it is shown that delay in filing was due to reasonable cause and not to willful neglect, the 50 per cent additional tax will not be assessed.

Any officer of any corporation required by law to make, render, sign, or verify any return, who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required to be made shall be guilty of a misdemeanor, and shall be fined not exceeding $2,000 or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

SUPPLEMENTARY STATEMENT.

The following information must be furnished by every corporation, joint stock company, or association, without which the return will not be accepted as complete. The items herein relate to the items listed in the above return form and bear corresponding numbers, and the totals set out in the above return must agree with the totals hereinafter set out.

1. PAID-UP CAPITAL STOCK:

Unissued or treasury stock should not be included in this item, but only such stock as has been actually issued and is outstanding at the close of the year and for which payment has been received. Where the stock issued is payable in installments or assessments, only so much of it as has been actually paid in upon such installments or assessments should be reported.

If no capital stock is issued or if the capital stock is issued without par value, the amount of capital invested in the business at the close of the year, not including borrowed capital, will be entered under this item.

(a) Paid-up "common stock"

(b) Paid-up "preferred stock"

Total paid-up stock

or (c) Capital employed in business

2. INDEBTEDNESS.

All interest-bearing indebtedness, for the payment of which the corporation or its property is bound, should be reported below. In the case of banking corporations and like financial institutions, deposits should not be reported as indebtedness. Indebtedness wholly secured by collateral, the subject of sale or hypothecation in the ordinary business of the corporation, should be reported here, but such indebtedness must not be entered under Item 2 above nor be considered in determining the amount of interest deductible under Item 6 (a).

Character of Obligation	Rate of interest	Principal

4-7

SUPPLEMENTARY STATEMENT Continued.

2. Gross Income

All manufacturing, mercantile, or other [illegible] gain or loss by inventory are required to state the [illegible] If the annual income or loss is determined otherwise than [illegible] stated in the space provided therefor. In case the [illegible] by inventory, merchandise must be inventoried at the cost price as [illegible] value will ultimately be reflected in the sales during the year [illegible] disposed of.

(a) Trade Operations:

Per inventory—

Sales during year	$	
Stock on hand at close of year		
Total		$
Purchases during year	$	
Stock on hand at beginning of year		
Total		$
Gross gain or loss [3 (a), first page]		$

[illegible] of manufacturing corporations, "purchases during the year" will [illegible] month of the cost of goods, finished or unfinished sold or unsold, as has [illegible] deducted under any item of the return. [illegible] charges should not be included in inventory (see Item 4).

[illegible] inventory shows loss, make entry in red ink or strike out "gain.")

[illegible] inventory is not used, state below method of determining gain or loss from [illegible]:

Total sales of year

[illegible] of the sale of capital assets acquired prior to March 1, 1913, the profit or [illegible] will be the difference between the fair market value of such [illegible] 1, 1913, and the price at which they are sold. If acquired subse- [illegible] March 1, 1913, then the profit or income to be returned is the difference [illegible] and the selling price.

[illegible] case of the sale of assets acquired prior to March 1, 1913, state—

Original cost of assets $

Fair market price or value as of March 1, 1913

[illegible] which assets were sold

[illegible] market price or value as of March 1, 1913, was determined:

[illegible] income will include all payments received in cash or its [illegible] or other property owned by the corporation making [illegible] received.

[illegible] includes all interest received on bonds or securi- [illegible] the exception of interest on obligations of a State [illegible] or interest upon the obligations of the United States [illegible] for the purpose of information should be [illegible]

[illegible] and foreign corporations.

	Amount of principal.	Rate.	Amount of interest received.
	$		$
			$

[illegible] to be made by a corporation out of its earnings [illegible] cash or stock of the paying com- [illegible] to date. Stock dividends must be returned [illegible] such cash value is held to be the proportionate [illegible] paying corporation since March 1, 1913, as is [illegible] or allowed to be distributed to the receiving

[illegible] which income has been received, and the amount thereof.

Purchases	$	2 760
[illegible]		50 [illegible]

[illegible] include only the ordinary and necessary expenses paid within the [illegible] and operation of the business and properties of the corpora- [illegible] deductible below, and will not include any disbursements the [illegible] specifically provided for in the return form proper on the obverse

[illegible] wholly secured by property collateral the subject of [illegible] ordinary business of the corporation as a dealer only in [illegible] and interest or in the loaning of funds thereby produced, [illegible] as a business expense to an amount of the interest paid on [illegible] not in excess of the actual value of the collateral securing it.

[illegible] labor, fuel, and other items entering into the cost of [illegible] or inventoried are deductible under this head as expenses, [illegible] have not been considered in determining the cost or purchases [illegible] when the income derived from operations is ascertained through an [illegible] not set up in Item 3 (c) of this statement.

[illegible] for incidental repairs which do not add to the value or appreciably [illegible] life of property are deductible as expenses, but expenditures for new [illegible] permanent improvements or betterments which increase the value of prop- [illegible] restoring or replacing property, are not deductible under this or any other [illegible] Such expenditures are properly chargeable to capital account, to [illegible] through annual depreciation allowances.

[illegible] made to officers or employees who are stockholders, which payments are [illegible] in the nature of salaries or compensation and the amount of which is based upon [illegible] of such officers or employees, are not deductible as a business [illegible]

(d) 1. Labor, wages, commissions, etc	$	12 [illegible]
2. Fuel, light, power, etc		19 [illegible]
3. Repairs (ordinary)		1 [illegible]
[illegible]		1 [illegible]
[illegible] wholly secured by collateral the		[illegible]

[illegible] from March 1, [illegible] receiving income from [illegible] must also make returns on Form 1040.

[illegible] this item should include [illegible] rentals and other charges, including any interest [illegible] payments which the corporation is required to make for the right to use and possess property in which it has no title, interest, or equity. See Note 6 (a).

5. (a) Losses:

Losses deductible under this item must be distinguished from depreciation or allowances for exhaustion, wear and tear. The losses must be absolute, complete, actually sustained during the year and charged off on the books of the corporation, and if the losses result from the sale of assets acquired prior to March 1, 1913, such losses shall be ascertained by taking the difference between the fair market price or value as of March 1, 1913, and the selling price.

Losses compensated by insurance or otherwise are not deductible.

Kind of asset.	Original amount.	Date charged off.	Amount charged off.
[illegible]	$		$
[illegible]			
[illegible]			
Total			

When were the deducted losses ascertained to be such? [illegible]

How were they so ascertained? [illegible]

In case of losses resulting from the sale of capital assets acquired prior to March 1, 1913, state—

(1) Original cost of assets $

(2) Fair market price or value as of March 1, 1913

(3) Loss resulting from such sale

State also how the fair market price or value as of March 1, 1913, was ascertained:

(b) Depreciation:

The amount deductible on account of depreciation is an amount charged off which fairly measures the loss during the year in the value of physical property by reason of exhaustion, wear and tear. Such amount should be determined upon the basis of the cost of the property and the probable number of years constituting its life. Stocks, bonds, and like securities, as well as any other intangible assets, are not subject to exhaustion, wear and tear within the meaning of the law. Hence any amount charged off as representing a shrinkage in the value of such assets is not deductible either as depreciation or loss.

Depreciation computed on total invoice value of merchandise in stock is not an allowable deduction, since any loss due to the shrinkage in the salable value of the merchandise will be reflected in the sales when the merchandise is disposed of.

Kind of property.	Its cost.	Probable life after acquirement.	Amount of depreciation. This year.	Amount of depreciation. Previous years.
[illegible]			$	$
[illegible]				
[illegible]				
Totals				$

If buildings, state kind of construction.

(c) Depletion:

Depletion applies to the exhaustion of natural deposits, and contemplates a deduction to return to the corporation the capital invested, or in case of purchase prior to March 1, 1913, an amount sufficient to return to the corporation the fair market value of such deposits as of that date. An allowable deduction on account of depletion must not exceed the fair market value in the mine of the product thereof mined and sold during the year, and in case of oil or gas wells the amount deductible should be computed upon the basis of the decline in the settled flow. The amount sought to be deducted on this account must be charged off on the books of the company.

*Kind of property.	Its cost if acquired subsequent to March 1, 1913.	†Fair market value as of March 1, 1913.	Amount of depletion. This year.	Amount of depletion. All years to date.
[illegible]	$	$	$	$

*Coal, iron ore, copper, oil, or gas.

†State how fair market value as of March 1, 1913, was determined.

6. (a) Interest Deductible:

The amount of interest deductible under this item is the amount actually paid within the year on an amount of bonded or other indebtedness not in excess of the paid-up capital stock outstanding at the close of the year, or if no capital stock, the entire amount of capital (not including interest-bearing indebtedness) employed in the business at the close of the year, plus, in each case, one-half of the interest-bearing indebtedness also then outstanding.

Capital employed in the business, as here used, contemplates the entire capital paid in by the members of the company, including so much of the accumulated surplus as is not in excess of the needs of the business, but does not include any borrowed capital or interest-bearing indebtedness.

Interest, so-called, or dividends paid upon preferred capital stock, is not deductible.

Interest deductible under this item includes all interest actually paid within the year not in excess of the limit hereinbefore indicated on any debt for which the corporation or any property in which it has title, interest, or equity is pledged, except interest on indebtedness wholly secured by collateral the subject of sale or hypothecation in the ordinary business of the company, etc., which interest is deductible under Item 4 (b) as a business expense.

INTEREST PAYMENTS ACTUALLY MADE DURING YEAR.

All forms of indebtedness upon which interest was paid should be listed here.

Name or kind of obligation.	Amount of principal.	Rate of interest.	Amount of interest paid.
[illegible]	$	%	$
[illegible]		%	
[illegible]		%	
[illegible]		%	
Total	$		$

...inventory shown here, make entry in red ink or strike out "gain.")

...inventory is not used, state below method of determining gain or loss from ...

Total sales of goods

...

...

...sale of capital assets acquired prior to March 1, 1913, the profit or ... will be the difference between the fair market value of such ... March 1, 1913, and the price at which they are sold. If acquired subse... March 1, 1913, then the profit or income to be returned is the difference ... cost and the selling price.

...sale of capital assets acquired prior to March 1, 1913, state—

...original cost of assets ..... $

...fair market price or value as of March 1, 1913 .....

...by which assets were sold .....

...fair market price or value as of March 1, 1913, was determined:

...

...

...income will include all payments received in cash or its ... or other property owned by the corporation making ... received.

...income includes all interest received on bonds or securi... with the exception of interest on obligations of a State ... or interest upon the obligations of the United States ... interest for the purpose of information should be ...

...AND OTHER CORPORATIONS.

	Amount of principal.	Rate.	Amount of interest received.
	$		$
	$		$

...to be made by a corporation out of its earnings ... cash or stock of the paying com... ...on account of income of the year in which ... to be returned. Stock dividends must be returned ... such stock value is held to be the proportionate ... paying corporation since March 1, 1913, as is ... or ordered to be distributed to the receiving ...

...which income has been received, and the amount thereof.

...Foreclosure	$	2	760
...Taxes			50
	$		

...include only the ordinary and necessary expenses paid within the ... and operation of the business and properties of the corpora... ...salaries, and will not include any disbursements the ... specifically provided for in the return form proper on the obverse ...

...wholly secured by property collateral the subject of ... the ordinary business of the corporation as a dealer only in ... ...obtained or in the loaning of funds thereby produced, ... as a business expense to an amount of the interest paid on ... ...in excess of the actual value of the collateral securing it.

...material, labor, fuel, and other items entering into the cost of ... ...or investment are deductible under this head as expense, ... have not been considered in determining the cost or purchase ... ...derived from operations is ascertained through an ... ...as per Item 3 (a) of this statement.

...for incidental repairs which do not add to the value or appreciably ... ...of property are deductible as expenses, but expenditures for new ... improvements or betterments which increase the value of prop... ...replacing property, are not deductible under this or any other ... ...Such expenditures are properly chargeable to capital account, to ... through annual depreciation allowances.

...made to officers or employees who are stockholders, which payments are ... ...salaries or compensation and the amount of which is based upon ... ...such officers or employees, are not deductible as a business ...

(a) 1. Labor, wages, commissions, etc	$	23,400
2. Fuel, light, power, etc		19,333
3. Rentals (ordinary)		1,340
4. Repairs, ordinary and incidental		12,340
5. Interest on indebtedness wholly secured by collateral the subject of sale, etc		600
6. Salaries of officers		5,760
7. Other expenditures—Classify		
Total expenses		

4. (a) 1. Names of officers and employees to whom salaries of $5,000 or more were paid during the year and amount paid to each. (If the space below is not adequate, a list marked "Item 4 (a)" containing this information should be attached to this form.)

Name.	Address.	Amount.
Total		

Total ..... $

When were the deducted losses ascertained to be such? ...

How were they so ascertained? ...

In case of losses resulting from the sale of capital assets acquired prior to March 1, 1913, state—

(1) Original cost of assets ..... $

(2) Fair market price or value as of March 1, 1913 .....

(3) Loss resulting from such sale .....

State also how the fair market price or value as of March 1, 1913, was ascertained:

...

...

(b) DEPRECIATION:

The amount deductible on account of depreciation is an amount charged off which fairly measures the loss during the year in the value of physical property by reason of exhaustion, wear and tear. Such amount should be determined upon the basis of the cost of the property and the probable number of years constituting its life. Stocks, bonds, and like securities, as well as any other intangible assets, are not subject to exhaustion, wear and tear within the meaning of the law. Hence any amount charged off as representing a shrinkage in the value of such assets is not deductible either as depreciation or loss.

Depreciation computed on total invoice value of merchandise in stock is not an allowable deduction, since any loss due to the shrinkage in the salable value of the merchandise will be reflected in the sales when the merchandise is disposed of.

Kind of property.	Its cost.	Probable life after acquirement.	Amount of depreciation. This year.	Amount of depreciation. Previous years.
...	...	...	$	$
...	...	...		
...	...	...		
Totals				

If buildings, state kind of construction.

(c) DEPLETION:

Depletion applies to the exhaustion of natural deposits, and contemplates a deduction to return to the corporation the capital invested, or in case of purchase prior to March 1, 1913, an amount sufficient to return to the corporation the fair market value of such deposits as of that date. An allowable deduction on account of depletion must not exceed the fair market value in the mine of the product thereof mined and sold during the year, and in case of oil or gas wells the amount deductible should be computed upon the basis of the decline in the settled flow. The amount sought to be deducted on this account must be charged off on the books of the company.

*Kind of property.	Its cost if acquired subsequent to March 1, 1913.	†Fair market value as of March 1, 1913.	Amount of depletion. This year.	Amount of depletion. All years to date.
Coal	$	$	$	$

*Coal, iron ore, copper, oil, or gas.
†State how fair market value as of March 1, 1913, was determined.

...

6. (a) INTEREST DEDUCTIBLE:

The amount of interest deductible under this item is the amount actually paid within the year on an amount of bonded or other indebtedness not in excess of the paid-up capital stock outstanding at the close of the year, or if no capital stock, the entire amount of capital (not including interest-bearing indebtedness) employed in the business at the close of the year, plus, in each case, one-half of the interest-bearing indebtedness also then outstanding.

Capital employed in the business, as here used, contemplates the entire capital paid in by the members of the company, including so much of the accumulated surplus as is not in excess of the needs of the business, but does not include any borrowed capital or interest-bearing indebtedness.

Interest, so-called, or dividends paid upon preferred capital stock, is not deductible.

Interest deductible under this item includes all interest actually paid within the year not in excess of the limit hereinbefore indicated on any debt for which the corporation or any property in which it has title, interest, or equity is pledged, except interest on indebtedness wholly secured by collateral the subject of sale or hypothecation in the ordinary business of the company, etc., which interest is deductible under Item 4 (5) as a business expense.

INTEREST PAYMENTS ACTUALLY MADE DURING YEAR.

All forms of indebtedness upon which interest was paid should be listed here.

Name or kind of obligation.	Amount of principal.	Rate of interest.	Amount of interest paid.
...	$		$
...			
...			
...			
Total	$		$

(b) INTEREST PAID ON DEPOSITS.

Interest paid (by banks) on deposits or on money received for investment and secured by interest-bearing certificates of indebtedness issued by a bank, banking association, loan or trust company is deductible in the entire amount so paid.

7. (a) TAXES—FEDERAL, STATE, ETC. ..... $

(b) TAXES—FOREIGN .....

Taxes deductible under these items are such taxes as are imposed by the United States, by any State or Territory, or by any political subdivision thereof, or by the government of any foreign country, and are actually paid or accrued on the books of the corporation, not in excess of the amount due and payable within the year for which the return is made, except that taxes imposed under the laws of a foreign government are not deductible from the income arising and accruing to a foreign corporation by reason of the business transacted or capital invested in this country or (except that taxes paid for local benefits or taxes paid by corporations pursuant to covenants guaranteeing to the holders of tax free, are not deductible).

Taxes paid by banks or other corporations on the value of their capital stock outstanding and in the hands of stockholders are not deductible. Such taxes are a primary liability of the stockholders, as such, and are payable out of their income.

State whether or not this return is made on the basis of actual receipts and disbursements.

If not, describe fully the other method used in computing net income ...

Where sufficient space is not provided for the entry of the information required in the "Supplementary Statement," lists containing full information in the form indicated should be marked in accordance with particular item and attached to this form.

[141] Telephone Garfield 101

NORTH AMERICAN OIL CONSOLIDATED
Flatiron Building—Market at Sutter

San Francisco, California,
March 23, 1918.

Justus S. Wardell, Esq.,
Collector of Internal Revenue,
First District of California,
San Francisco, Cal.

Dear Sir:—

North American Oil Consolidated, a domestic corporation, herewith presents an amended Income Tax return for the year ending December 31, 1916. By comparing this amended return with the original return it will be shown that the net loss for the year 1916 is decreased from $129,434.42 to $27,593.14, which indicates an additional net income to the corporation of $101,841.28. The reason this additional income was omitted from the original return filed is as follows:

A portion of the property owned by the corporation consists of Section 2, Township 32 S., Range 23 M. D. B & M., situated in the Midway Oil District in Kern County, Cal. The title to this property has been in dispute with the United States Government, the Government claiming that it—and not the corporation—was the owner of the property. Returns from this property were received by the corporation up to and including the month of January, 1916, when a receiver was appointed in a suit that had been filed by the United

States Government against the corporation, affecting the title to this property. The income and expenses for the property for the month of January, 1916, were included in the original return. For the eleven remaining months of the year 1916 the property was not in possession of the corporation but was in the possession of the receiver, who operated the property and took into his own possession all the receipts therefrom, out of which he paid the operating expenses. The corporation, however, kept its books of accounts in the same manner in which it had previously kept them, showing the receipts from the property and the profits realized therefrom, and carrying these profits on its books and annual statement. As the profits, however, did not reach the corporation but were withheld by the receiver, it was not thought, at the time the original return was made, that the income tax should be paid on these profits unless they were finally actually received by the corporation, as it might have happened that the suit would have been decided against the corporation and in favor of the Government, in which event the corporation never would have received this money. The event, however, proved otherwise. The United States District Court decided, in 1917, that the corporation owned the property and that the United States Government had no claim thereto. Thereafter, and in due course, the money in the hands of the receiver was turned over to the corporation and actu-

[142] North American Oil Consolidated.
Justus S. Wardell, Esq.—#2 3/23/18.

ally received by it in cash. This money was received on the 3rd day of November, 1917. The net profit that accrued to the corporation during the year 1916, from this money in the hands of the receiver, was the amount of the difference between the loss shown by this amended return and the original return—i. e., $191,841.28

We, therefore, submit this amended return and ask that it be substituted for the original return rendered in February of 1917.

Very truly yours,
NORTH AMERICAN OIL CONSOLIDATED.

By LOUIS TITUS,
President.

By C. F. NANCE,
Secretary.

CFN–FR.

3851

CAUTION

Read this form and all instructions carefully and fill in supplementary statement on back of return first.

Totals in supplementary statement must agree with totals on face of return.

Form 1041 (Revised January 1917) UNITED STATES INTERNAL REVENUE

CORPORATION INCOME TAX RETURN

(FOR ALL CORPORATIONS EXCEPT RAILROAD AND INSURANCE COMPANIES.)

Return of annual net income for the { calendar year 1917 / fiscal year ended DEC 31 1917

(Do not write in this space.)
RECEIVED
MAR 27 1918
MAR 3072 70
Audited by

Name of corporation [illegible]

Principal office [illegible]

Kind of business carried on [illegible] Date of organization [illegible]

1. Total amount of paid-up capital stock outstanding at the ... is no capital stock the capital other than interest-bear... the business at the close of the year. Unissued or ... cluded in this item, but only stock actually issued ... the year for which this return is made ... or if there ... employed in ... st not be in... t the close of

(a) Paid-up "common stock"	$
(b) Paid-up "preferred stock"	
Total paid-up stock	$
or (c) Capital employed in business	$

2. Total amount of bonded or other interest-bearing indebt... of the year, exclusive of indebtedness wholly secur... sale or hypothecation in the ordinary business of th... of indebtedness incurred in the purchase of securities ... subject to income tax. ... g at the close ... be subject of ... exclusive also ... on which is not

Character of obligation.	Rate of interest.	
1st Mtg Bond Bonds	6%	$
Total indebtedness		$

INCOME.

3. (a) Gross sales and other income from operations		
(b) Income from rentals, royalties, etc		
(c) Income from interest (see item 2c on back of return)		
(d) Income from dividends (see item 3d on back of return)		
(e) Income from all other sources (see item 3e on back)		
Total gross sales and other income		
Less total deductions		
8. Total net income		
Total (a plus b)		
Tax at 8% (Item 9 less total of a plus b)		
Amount taxable at 12% (Item 10)		
Total net income shown in Item 8		
(a) Dividends received (Item 3d) $ None		
Total (a plus b)		
Tax at 4% (Item 12 less total of a plus b)		

4. (a) Cost of goods and other property sold
(b) Expenses, [illegible]
5. (a) Losses sustained ... charged off
(b) Depreciation charged off
(c) Depletion charged off
6. (a) Interest paid (except as covered under (b) and (c))
(b) Interest paid on deposits (for banks only)
(c) Interest paid on indebtedness wholly secured by collateral
7. (a) Domestic taxes paid, not including income and excess profits taxes
(b) Foreign taxes paid
Total deductions

12. Amount of excess profits tax (see instructions below)
13. Amount of 2% tax (2% of Item 8)
14. Amount of 4% tax (4% of Item 12)
15. Amount of 8% tax (8% of [illegible])
16. Total tax assessable

REVIEWED
NOV 2 1920
REVIEWER

AUDITED
TAX LIABILITY

I, the undersigned, president and treasurer of the above-named company, which [illegible] net income is herein set forth, being ... and in the supplementary statement and in any ... hereto attached to or accompanying this return are, to his best knowledge and belief, [illegible] correct in each and every particular.

Sworn to and subscribed before me this 26th day of March, 1918

W. T. Brown.
NOTARY PUBLIC
In and for the City and County of San Francisco, State of California
(Official capacity.)

Seal of officer taking affidavit.

FOR
CLAIM CONTROL
NUMBER
BASIS (Value) Original
AUDITED BY
UNIT NO.
DATE 1918

GENERAL INSTRUCTIONS.

Excess profits tax.—For the purpose of war excess profits tax, every corporation subject to income tax shall be deemed to be engaged in business, and all the trades and businesses in which it is engaged (whether continuously carried on or not) shall be treated as a single trade or business, and all its income from whatever source derived shall be deemed to be received from such trade or business.

In the case of a trade or business having no invested capital or not more than a nominal capital, the excess profits tax is equivalent to 8 per cent of the net income in excess of $5,000. This tax applies primarily to corporations engaged principally in rendering personal service in which the employment of capital is not necessary and the earnings of which are to be credited primarily to the activities of the owners.

In the case of a trade or business having more than a nominal invested capital, the excess profits tax is equal to various percentages of the net income, depending on its ratio to the invested capital. Every corporation having a net income of over $5,000 for the taxable year must make a return of invested capital and compute the amount of tax on Form 1088.

For further instructions see Regulations No. 41, Relative to the War Excess Profits Tax. A copy can be obtained from any collector of internal revenue.

Time of filing returns.—Returns made on the basis of a calendar year must be filed on or before March 1 with the collector of internal revenue of the district in which is located the principal place of business of the corporation; if made on the basis of a FISCAL YEAR, they must be filed within 60 days after the close of such year.

Fiscal year.—Corporations desiring to make returns of annual net income on the basis of a fiscal year other than the calendar year must, not less than 30 days prior to March 1 of the ... excess profits tax law if made on the calendar year basis, file with the collector a notice in writing designating the last day of some month as the close of such fiscal year. ... with the date designated as the close of the fiscal year must be filed on or before the first day of March of the next calendar year.

1. Total amount of paid-up capital stock outstanding at the close of the year. If there is no capital stock the capital other than interest-bearing indebtedness employed in the business at the close of the year. Unissued or unsubscribed stock should not be included in this item, but only stock actually issued during the year for which this return is made

(a) Paid-up "common stock"	
(b) Paid-up "preferred stock"	
Total paid-up stock	
or (c) Capital employed in business	

2. Total amount of bonded or other interest-bearing indebtedness outstanding at the close of the year, exclusive of indebtedness wholly secured by collateral deposited with the lender or hypothecation in the ordinary business of the borrower. If any portion of the indebtedness is not subject to income tax, exclusive also of indebtedness incurred in the purchase of securities on which is not subject to income tax.

Character of obligation.	Rate of interest.	Principal.
1st Mtg Lease Bonds	6%	$ 275 000 00
Total indebtedness		$ 275 000 00

REVIEWED
(Examine all items on back of return.)
NOV 2 1922
REVIEWER

INCOME.

3. (a) Gross sales and other income from operations	$ 1186 41	
(b) Receipts from rentals, royalties, etc	2 815 50	
(c) Receipts from interest (see item 3c on back of return)	11 945 82	
(d) Income from dividends (see item 3d on back of return)	None	
(e) Income from all other sources (see item 3e on back)	68 040 06	
Total gross sales and other income	$ 82 947 99	
Less total deductions	39 247 25	
8. Total net income	$ 43 700 74	
Less (a) Excess profits tax (item 12)	$ 877 90	
(b) Dividends received out of earnings of 1913, 1914, 1915	None	
Total (a plus b)		$ 877 90
Balance taxable at 2% (item 8 less total of a plus b)	$ 42 822 84	
(a) Amount taxable at 1% (item 8b)		
Balance of total net income shown in item 8	$ 42 822 84	
Balance taxable at 4% (item 12 less total of a plus b)	$ 877 90	
(b) Dividends received (item 3d)	None	
Total (a plus b)		$ 877 90
Balance taxable at 4% (item 10 less total of a plus b)	$ 41 944 94	
If return is made for a fiscal year ended in 1917, amount at 4% on such fraction of item 11 as there is income from January 1, 1917, to the close of the fiscal year covered by this return		
Total income taxable here		

4. (a) Cost of goods and other property sold		
(b) Expenses, [illegible]		
5. (a) Losses sustained [illegible]		
(b) Depreciation other than [illegible]		19777
(c) Depletion [illegible]		
6. (a) Interest paid (except as entered under 6b and c)		25877
(b) Interest paid on deposits (for banks only)		
(c) Interest paid on indebtedness wholly secured by collateral		
7. (a) Domestic taxes paid, not including income and excess profits taxes		
(b) Foreign taxes paid		
Total deductions		$ 39 247 25
12. Amount of excess profits tax (see instructions below)		$ 877 90
13. Amount of 2% tax (2% of item 8)		
14. Amount of 1% tax (1% of item 8b)		
15. Amount of 4% tax (4% of [illegible])		
16. Total tax assessable		

AUDITED
TAX LIABILITY
FOR
CLAIM CONTROL
NUMBER
BASIS (P.) (T.) OF
AUDITED BY
CHIT NO.
DATE 1922

I, the undersigned, president and treasurer of the above-named company, whose total net income is herein set forth, being duly sworn, each for himself, deposes and says that the items entered in the foregoing report and in the supplementary statement and in any schedule hereto attached or accompanying this return are, to his best knowledge and belief, true and correct in each and every particular.

Subscribed and sworn to before me this 26th day of March; 1918.

W. T. Brown.

Seal of officer taking affidavit.

NOTARY PUBLIC
In and for the City and County of San Francisco, State of California
(Official capacity.)

GENERAL INSTRUCTIONS.

Excess profits tax.—For the purpose of war excess profits tax, every corporation subject to income tax shall be deemed to be engaged in business, and all the trades and businesses in which it is engaged (whether continuously carried on or not) shall be treated as a single trade or business, and all its income from whatever source derived shall be deemed to be received from such trade or business.

In the case of a trade or business having no invested capital or not more than a nominal capital, the excess profits tax is equivalent to 8 per cent of the net income in excess of $3,000. This tax applies primarily to corporations engaged principally in rendering personal service in which the employment of capital is not necessary and the earnings of which are to be ascribed primarily to the activities of the owners.

In the case of a trade or business having more than a nominal invested capital, the excess profits tax is equal to various percentages of the net income, depending on its ratio to the invested capital. Every corporation having a net income of over $3,000 for the taxable year must make a return of invested capital and compute the amount of tax on Form 1120.

For further instructions see Regulations No. 41, Relative to the War Excess Profits Tax. A copy can be obtained from any collector of internal revenue.

Time of filing returns.—Returns made on the basis of a calendar year must be filed on or before March 1 with the collector of internal revenue of the district in which is located the principal place of business of the corporation; if made on the basis of a FISCAL YEAR, they must be filed within 60 days after the close of such year.

Fiscal year.—Corporations desiring to make returns of annual net income on the basis of a fiscal year other than the calendar year must, not less than 30 days prior to March 1 of the year in which the return would be due if made on the calendar year basis, file with the collector a notice in writing designating the last day of some month as the close of such fiscal year. A return for that portion of the calendar year ending with the date designated as the close of the fiscal year must be filed on or before the first day of March of the next calendar year, and the return for each full fiscal year thereafter must be filed within 60 days after the closing date of the fiscal year as established.

Extension of time.—In the case of neglect to file the return within the prescribed time, the collector is authorized to grant an extension of the filing period not exceeding 30 days from the normal due date, provided such neglect was due to absence or sickness and provided an application for such extension is made in writing prior to the expiration of the period for which extension may be granted. In meritorious cases the Commissioner is authorized to grant such further extension as he may deem proper.

Signatures and verification. Returns must be signed and verified by two of the officers of the corporation, that is, by the president, vice president, or other principal officer, and the treasurer or other financial officer, and must be sworn to before an officer authorized to administer oaths, and the seal of the attesting officer, if he is required to have a seal, must be impressed on the return in the space provided for that purpose.

Subsidiary companies. The corporation making this return must attach hereto a list of all its subsidiary companies, if any, with the location of the principal place of business of each. Each subsidiary company must make a separate and distinct return.

Foreign corporations.—Foreign corporations subject to the law are required to make return to the collector in the district in which is located the principal place of business or agency through which it is transacted the business in the United States, or if the corporation has no place of business in the United States, the return will be filed with the collector of internal revenue at Baltimore, Maryland. The gross income to be returned includes the entire business transacted and capital invested in the United States, including interest on bonds, notes, or other interest bearing obligations of residents, corporations, partnerships, or associations, and dividends on stock of resident corporations, joint stock companies, or associations, but does not include income derived from sources wholly without the United States. The deductions allowed are only such losses and disbursements incurred and necessary to the transaction of the business in this country, all as specifically set out in the Act. For certain taxable items collected at the source, the tax on income accruing and accruing to a foreign corporation from business done or capital invested in the United States will be withheld at the source. If a foreign corporation has no place of business in the United States and no return is made, the tax on income from interest and dividends will be withheld at the source.

Penalties. Corporations refusing or neglecting to make returns within the time prescribed by law or regulations made thereunder, and officers thereof who shall be liable personally, shall be liable to a penalty of not exceeding $10,000, and an additional tax of 50 per cent because of neglect to file the return within the time prescribed by law, or 5 per cent in the case of a false or fraudulent return, shall be added to the assessment, provided that in case of delinquency it is shown that the failure was not for the purpose to evade any tax and that such failure was due to reasonable cause and not to willful neglect, the 50 per cent addition shall not be added. [illegible]

Any officer of any corporation required by law to make, render, sign, or verify any return who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by law shall be guilty of a felony and shall be fined not more than $10,000 or be imprisoned not exceeding five years, or both, at the discretion of the court, with the costs of prosecution.

D-1

SUPPLEMENTARY STATEMENT

The following information must be furnished, either on this sheet or on attached schedules, by every corporation, joint-stock company, or association. Without such information the return will not be accepted as complete. The items below relate to the correspondingly numbered items on the first page.

3. (a) FROM INTEREST.

Interest to be reported as income for the purpose of the income tax includes all interest received on bonds or securities owned by the corporation, except interest on obligations of a State or political subdivision thereof or interest upon the obligations of the United States or its possessions.

3. (d) FROM DIVIDENDS RECEIVED.

Any distribution made or ordered to be made by a corporation out of its earnings or profits accrued since March 1, 1913, whether in cash or stock of the paying company, must be returned (under Item 3 (d) on front page of this form) by the receiving corporation as income of the year in which the distribution was made or ordered to be made and will be taxed at the rates prescribed by law for the years in which surplus or profits distributed were earned, viz, 1% on amounts received out of earnings of 1913 (subsequent to March 1, 1913), 1914, and 1915, and 2% on amounts received from earnings of 1916 and 1917. A statement from the corporation paying the dividends included herein should be attached to this return, showing separately the amount of dividends paid out of earnings of each year; otherwise, they will be deemed to have been paid out of the earnings of 1917 and will be taxed 2%. The receiving corporation, in order that tax may be computed on dividends received in 1917 at the rates applicable to the years in which the profits were earned, must fill in the following form:

Dividends received in 1917 out of profits earned during year subsequent to March 1, 1913.

1913	1914	1915	1916	1917	Total
$	$	$	$	$	

3. (e) FROM OTHER SOURCES.

Income received, from all sources not elsewhere specified, should be itemized below:

Profit from sale of property	$	[illegible]	[illegible]
Profit from settlement of [illegible]		[illegible]	[illegible]
Profit from sale of Bonds		[illegible]	[illegible]
Profit from sale of property in 1916		33	682 51
Total	$	65	040 06

4. (a) COST OF GOODS AND OTHER PROPERTY SOLD.

Report the cost of goods sold in the following form:

Merchandise bought for sale			
Cost of manufacturing or otherwise producing goods (if separately kept, give details)			
Labor, (separate schedule showing principal items of cost)			
Raw materials at beginning of year			
Total			
Less inventories at end of year			
Net cost of goods sold			
Explanations			

If the corporation makes inventories of merchandise or materials, explain the basis on which they are made, whether (a) at cost, or (b) at cost or market value, whichever is lower. If no inventories are made, make no entries referring to inventories, but report as cost of goods purchased or produced during the year. If the cost of manufacturing [illegible] below.

[illegible] property sold, report the cost of the property sold for the purpose of this return, as follows:

1. Original cost of property	$
2. Depreciation since March 1, 1913, if acquired before that date	
3. Cost of subsequent improvements, if any	
4. Depreciation and depletion to date of sale	
5. Net cost (Item 1 or Item 2 plus Item 3 minus Item 4)	
6. State how market value March 1, 1913, was determined	

Does such value include any good will? If so, how much? $

4. (b) EXPENSES, GENERAL.

This item should include only the ordinary and necessary expenses paid within the year in the operation of the business and maintenance of the properties of the corporation, itemized as per schedule below. It must not include any expenditures reported under 4 (a), 5, 6, or 7.

Expenditures for incidental repairs which do not add to the value or appreciably prolong the life of property are deductible as expenses, but expenditures for new buildings, permanent improvements or betterments which increase the value of property, or for restoring or replacing property, are not deductible under this or any other item of the return. Such expenditures are properly chargeable to capital account, to be extinguished through annual depreciation charges.

Payments made to officers or employees, who are stockholders, in the guise of salaries or compensation, the amount of which is based upon the stockholdings of such officers or employees, are not deductible as a business expense.

1. Salaries of officers	$	[illegible]	
2. Labor, wages, compensation, etc. (not included in "Cost of manufacturing or otherwise producing goods" under 4 (a))		[illegible]	
3. Rents, royalties, and other payments in lieu of rent		[illegible]	
4. Repairs, ordinary and incidental		[illegible]	
[illegible]		[illegible]	
[illegible]		[illegible]	
5. Other expenditures (classify) [illegible]		[illegible]	
[illegible]		[illegible]	

When were the deducted losses ascertained to be such? [illegible]

How were they so ascertained? [illegible]

The cost of property lost should be determined as indicated in Item 4 (a).

A bad debt offsetting income accrued since January 1, 1909, will not be allowed as a deduction unless the amount was reported as income for the year in which the debt was created.

State how the debts charged off (if any) were ascertained to be worthless [illegible]

No debts charged off

If at any future time a debt charged off as worthless is collected the amount collected must be returned as income for the year in which received.

Unpaid debts are not deductible if made good by recovery of property sold or retention of property pledged.

5. (b) DEPRECIATION.

The amount deductible on account of depreciation is an amount charged off which fairly measures the loss during the year in the value of physical property by reason of exhaustion, wear, and tear. Such amount should be determined upon the basis of the cost of the property and the probable number of years constituting its life. Stocks, bonds, and like securities, as well as any other intangible assets, are not subject to exhaustion, wear, and tear within the meaning of the law. Hence any amount charged off as representing a shrinkage in the value of such assets is not deductible either as depreciation or as a loss.

Depreciation computed on total invoice value of merchandise in stock is not an allowable deduction by reason of damage or obsolescence the merchandise is unsalable.

If a deduction is made on account of depreciation, the following statement must be filled in:

Kind of property	Its cost.	Probable life after acquirement.	Amount of depreciation charged off. This year.	Amount of depreciation charged off. Previous years.
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Totals	[illegible]		[illegible]	[illegible]

If building, state under "Kind of property" the material of which constructed.

5. (c) DEPLETION.

Depletion applies to the exhaustion of natural deposits, and contemplates a deduction to return to the corporation the capital invested, or in case of purchase prior to March 1, 1913, an amount sufficient to return to the corporation the fair market price or value of such deposits as of that date. An allowable deduction on account of depletion must not exceed the fair market value as of March 1, 1913, or the cost subsequent to that date, of the product mined and sold during the year, and will be determined in accordance with the rule set out in Articles 170 to 178, Regulations 33, Revised. The amount sought to be deducted on this account must be charged off on the books of the company.

*Kind of property.	Its cost if acquired subsequent to March 1, 1913.	†Fair market value as of March 1, 1913.	Amount of depletion charged off. This year.	Amount of depletion charged off. Previous years.
[illegible]	[illegible]	$	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

* State in a word, coppers, silver, or gold.

† State how fair market value as of March 1, 1913, was determined [illegible]

[illegible] written off to that date

6. INTEREST PAID.

(a) The amount of interest deductible under (c) is the amount actually paid within the year on an amount of bonded or other indebtedness (except an indebtedness falling under 6 (b) or 6 (c) and indebtedness incurred for the purchase of obligations or securities the income from which is exempt from income tax) not in excess of the paid-up capital stock outstanding at the close of the year, or if there is no capital stock, the entire amount of capital (not including interest-bearing indebtedness) employed in the business at the close of the year, plus, in each case, one-half of the interest-bearing indebtedness also then outstanding.

Capital employed in the business, as here used, contemplates the entire capital paid in by the members of the company, including so much of the accumulated surplus as is actually employed in the business, but does not include any borrowed capital or interest-bearing indebtedness.

(b) Interest paid (by banks) on deposits or on money received for investment and secured by interest-bearing certificates of indebtedness issued by a bank, banking association, or loan or trust company is deductible in the entire amount so paid.

(c) If the corporation's indebtedness, or any part thereof, is wholly secured by collateral which is the subject of sale or hypothecation in the corporation's ordinary business as a dealer in such property, the interest paid on an amount of such indebtedness not exceeding the actual value of the collateral may be deducted.

Describe all obligations on which interest is paid in the following form. Distinguish plainly collateral loans falling under 6 (c) and also obligations incurred for the purchase of securities, the income from which is exempt from income tax.

Kind of obligation.	Amount of principal.	Rate of interest.	Amount of interest paid.
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
Total	[illegible]		[illegible]

7. (a) TAXES PAID.

Taxes, paid or accrued on the books of the corporation during the taxable year, are deductible with the following exceptions: Federal income and excess profits taxes (including taxes paid on the interest on its own obligations in pursuance of a covenant contained therein relieving the holder of liability for such taxes), foreign taxes on income derived from sources within the United States by foreign corporations, local taxes specially assessed against property on account of benefits derived from public improvements or betterments, and taxes upon the corporation's capital stock in the hands of the stockholders.

Dividends received in 1917 out of profits earned each year subsequent to March 1, 1913.

1913	1914	1915	1916	1917
$	$	$	$	$

2. (c) FROM OTHER SOURCES.

Income received from all sources not elsewhere specified should be itemized below:

Interest on bank deposits and on bonds	$	11 111 47
Gain from sale of bonds		400 —
Profit from settlement of claim		19 519 05
Profit from sale of property in 1918		33 582 51
Total	$	65 040 03

4. (a) COST OF GOODS AND OTHER PROPERTY SOLD.

Report the cost of goods sold in the following form:

Merchandise bought for sale		
Cost of manufacturing or otherwise producing goods (if separately shown on books, attach schedule showing principal items of cost)		
Total		
Less inventories at end of year		
Net cost of goods sold		

Explanation: Cost of Sales at Plant, Warehouse & Yard

If the corporation makes inventories of merchandise or materials, explain the basis on which they are made, whether (a) at cost, or (b) at cost or market value, whichever is lower. If no inventories are made, make no entries referring to inventories, but report the total cost of goods purchased or produced during the year. If the cost of manufacturing includes any cost [illegible] expenses from general expenses in the corporation's books, enter it in "Expenses, general," below.

If the corporation has sold any of its capital assets, report the cost of the property sold in the following:

1. Kind of property	$
2. Cost if acquired before March 1, 1913, if acquired before that date	
3. Cost of subsequent improvements, if any	
4. Depreciation and depletion to date of sale	
5. Net cost (item 1 or item 2 plus item 3 minus item 4)	
6. State how market value March 1, 1913, was determined	

Does such value include any good will? If so, how much? $

4. (b) EXPENSES, GENERAL.

This item should include only the ordinary and necessary expenses paid within the year in the operation of the business and maintenance of the properties of the corporation, itemized as per schedule below. It must not include any expenditures reported under 4 (a), 5, 6, or 7.

Expenditures for incidental repairs which do not add to the value or appreciably prolong the life of property are deductible as expenses, but expenditures for new buildings, permanent improvements or betterments which increase the value of property, or for restoring or replacing property, are not deductible under this or any other item of the return. Such expenditures are properly chargeable to capital account, to be extinguished through annual depreciation charges.

Payments made to officers or employees, who are stockholders, in the guise of salaries or compensation, the amount of which is based upon the stockholdings of such officers or employees, are not deductible as a business expense.

1. Salaries of officers	$	15 [illegible]	11
2. Salaries, wages, commissions, etc. (not included in "Cost of manufacturing or otherwise producing goods" under 4 (a))		9a [illegible]	22
3. Rents, royalties, and other payments in lieu of rent		2 a.a5	99
4. Repairs, ordinary and incidental		11 15 ab	11
Fuel, Light, Power &c		8a [illegible]	92
Insurance Premiums		[illegible]	91
5. Other expenditures (classify) Main Office "		[illegible]	8
Warehouse		[illegible]	12
Total expenses	$	15[illegible]	27

If salaries were increased or extra compensation was paid to officers, state the amount, the reason therefor, and the basis on which computed: Salaries increased to meet present conditions

5. (a) LOSSES.

Losses deductible under this item must be distinguished from depreciation or allowances for exhaustion, wear, and tear. The loss not compensated by insurance or otherwise, must be absolute, complete, actually sustained during the year, and charged off on the books of the corporation.

Kind of property on which loss is claimed	Cost of property	Cause of loss	Amount charged off within year
Lack Knit Underwear	$ 2,215 00	Explosion	2,215 00
Castor plant	4 [illegible]		
Total			

like securities, as well as any other intangible assets, and not connected with and forming a part of the business, are capital assets within the meaning of the law. Hence any amount charged off as depreciation in the value of such assets is not deductible either as depreciation or as a loss.

Depreciation computed on total invoice value of merchandise in stock is not an allowable deduction by reason of damage or obsolescence the merchandise is unsalable.

If a deduction is made on account of depreciation, the following statement must be filled in:

Kind of property	Its cost.	Probable life after acquirement.	Amount of depreciation charged off. This year.	Amount of depreciation charged off. Previous years.
Factory Buildings	$ 5,000.00	8 1/2 years	$ [illegible]	$ [illegible]
Machinery, Tools	9,000.00	"	2,160.00	6,480.00
Office Equipment	$18,275.47	"	[illegible]	[illegible]
Total	$ [illegible]		$ [illegible]	$ [illegible]

If building, state under "Kind of property" the material of which constructed.

5. (c) DEPLETION.

Depletion applies to the exhaustion of natural deposits, and contemplates a deduction to return to the corporation the capital invested, or in case of purchase prior to March 1, 1913, an amount sufficient to return to the corporation the fair market price or value of such deposits as of that date. An allowable deduction on account of depletion must not exceed the fair market value as of March 1, 1913, or the cost subsequent to that date, of the product mined and sold during the year, and will be determined in accordance with the rule set out in Articles 170 to 178, Regulations 33, Revised. The amount sought to be deducted on this account must be charged off on the books of the company.

*Kind of property.	Its cost if acquired subsequent to March 1, 1913.	†Fair market value as of March 1, 1913.	Amount of depletion charged off. This year.	Amount of depletion charged off. Previous years.
Coal Property	Prospect	$ —	$ [illegible]	[illegible]
"	"	[illegible]	[illegible]	[illegible]
"	"	[illegible]	[illegible]	[illegible]

* State here if ores, coals, oil or gas.

† State how fair market value as of March 1, 1913, was determined: Cost of property less amount of depletion written off to that date

6. INTEREST PAID.

(a) The amount of interest deductible under (c) is the amount actually paid within the year on an amount of bonded or other indebtedness (except on indebtedness falling under 6 (b) or 6 (c) and indebtedness incurred for the purchase of obligations or securities the income from which is exempt from income tax) not in excess of the paid-up capital stock outstanding at the close of the year, or if there is no capital stock, the entire amount of capital (not including interest-bearing indebtedness) employed in the business at the close of the year, plus, in each case, one-half of the interest-bearing indebtedness also then outstanding.

Capital employed in the business, as here used, contemplates the entire capital paid in by the members of the company, including so much of the accumulated surplus as is actually employed in the business, but does not include any borrowed capital or interest-bearing indebtedness.

(b) Interest paid (by banks) on deposits or on money received for investment and secured by interest-bearing certificates of indebtedness issued by a bank, banking association, or loan or trust company is deductible in the entire amount so paid.

(c) If the corporation's indebtedness, or any part thereof, is wholly secured by collateral which is the subject of sale or hypothecation in the corporation's ordinary business as a dealer in such property, the interest paid on an amount of such indebtedness not exceeding the actual value of the collateral may be deducted.

Describe all obligations on which interest is paid in the following form. Distinguish plainly collateral loans falling under 6 (c) and also obligations incurred for the purchase of securities, the income from which is exempt from income tax.

Kind of obligation.	Amount of principal.	Rate of interest.	Amount of interest paid.
Secured debt	$ [illegible]	[illegible]	$ [illegible]
Promissory Notes	[illegible]	[illegible]	[illegible]
Account "	[illegible]	[illegible]	[illegible]
Total	$ [illegible]		$ [illegible]

7. (a) TAXES PAID.

Taxes, paid or accrued on the books of the corporation during the taxable year, are deductible with the following exceptions: Federal income and excess profits taxes (including taxes paid on the interest on its own obligations in pursuance of a covenant contained therein relieving the holder of liability for such taxes), foreign taxes on income derived from sources within the United States by foreign corporations, local taxes specially assessed against property on account of benefits derived from public improvements or betterments, and taxes upon the corporation's capital stock in the hands of the stockholders.

BASIS OF RETURN.

Is this return made on the basis of actual receipts and disbursements? Yes

If not, describe fully what other basis or method was used in computing net income

UNDISTRIBUTED INCOME, SURPLUS, AND UNDIVIDED PROFITS.

Total net income of taxable year preceding that for which this return is made (less income tax paid thereon)	$ [illegible]
Amount of such income remaining undistributed six months after the close of that year	None
Amount of such income remaining undistributed twelve months after the close of that year	None
Total surplus and undivided profits at close of taxable year	$ 1,524,724.16

If sufficient space is not provided for the entry of any information required in the "Supplementary Statement," schedules in the form indicated, marked with the number of the item to be explained, should be attached to this form.

Now, November 6, 1930, the foregoing statement of evidence certified from the record as a true copy.

[illegible]
Clerk, U. S. Board of Tax Appeals.

[145] Filed Oct. 11, 1930. United States Board of Tax Appeals.

United States Board of Tax Appeals.

DOCKET Nos. 8714–16,107.

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

NORTH AMERICAN OIL CONSOLIDATED,
Respondent.

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the United States Board of Tax Appeals:

Please prepare a transcript of record in this cause, on or before November 10, 1930, transmit the same to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and include in said transcript copies, duly certified as correct, of the following documents:

1. The docket entries of proceedings before the Board in the above-entitled cause;
2. All pleadings;
3. Findings of fact and opinion of the Board;
4. Final order of redetermination entered on August 29, 1929;
5. Petition for review;
6. Any and all orders of enlargements made by the Board with respect to preparation of record on appeal;
7. Statement of evidence, together with the ex-

hibits thereto attached and the order of the Board approving and settling the same;

8. This praecipe for transcript.

[146] Said transcript to be prepared, certified and transmitted as required by law and the rules of the United States Circuit Court of Appeals for the Ninth Circuit.

Dated October 11, 1930.

G. A. YOUNGQUIST.
G. A. YOUNGQUIST,
Assistant Attorney General.
(Signed) C. M. CHAREST.
C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue.

11d.
10/10/30.

Now, November 6, 1930, the foregoing praecipe certified from the record as a true copy.

[Seal] B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[Endorsed]: No. 6315. United States Circuit Court of Appeals for the Ninth Circuit. David Burnet, Commissioner of Internal Revenue, Petitioner, vs. North American Oil Consolidated, a Corporation, Respondent. Transcript of Record. Upon Petition to Review an Order of the United State, Board of Tax Appeals.

Filed November 19, 1930.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

No. 6315

United States
Circuit Court of Appeals
For the Ninth Circuit.

DAVID BURNET, Commissioner of Internal Revenue,

Petitioner,

vs.

NORTH AMERICAN OIL CONSOLIDATED, a Corporation,

Respondent.

Upon Petition to Review an Order of the United States Board of Tax Appeals.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

At a stated term, to wit, the October term, A. D. 1930, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the eighth day of June, in the year of our Lord one thousand nine hundred and thirty-one. Present: The Honorable CURTIS D. WILBUR, Senior Circuit Judge, Presiding; Honorable WILLIAM H. SAWTELLE, Circuit Judge; Honorable JEREMIAH NETERER, District Judge.

[Title of Cause.]

ORDER OF SUBMISSION.

ORDERED above cause argued by Mr. Allin H. Pierce, Special Attorney, Bureau of Internal Revenue, counsel for the petitioner, and by Mr. Herbert W. Clark, counsel for the respondent, and submitted to the Court for consideration and decision.

At a stated term, to wit, the October term, A. D. 1930, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the fifteenth day of June, in the year of our Lord one thousand nine hundred and

thirty-one. Present: The Honorable CURTIS D. WILBUR, Senior Circuit Judge, Presiding; Honorable WILLIAM H. SAWTELLE, Circuit Judge; Honorable JEREMIAH NETERER, District Judge.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT.

By direction of the Court, ORDERED that the typewritten opinion this day rendered by this court in above cause be forthwith filed by the Clerk and that a judgment be filed and recorded in the minutes of this court in accordance with the opinion filed.

[Title of Court and Cause.]

OPINION U. S. CIRCUIT COURT OF APPEALS.

Upon Petition to Review an Order of the United States Board of Tax Appeals.

Before WILBUR and SAWTELLE, Circuit Judges, and NETERER, District Judge.

WILBUR, Circuit Judge.—Petitioner seeks to review a decision of the Board of Tax Appeals with relation to a deficiency tax of respondent for income and profit taxes for the year 1917. The sole

question involved is whether or not the sum of $171,972.20 derived from the sale of oil produced on section 2 during the year 1916 impounded in the hands of a receiver appointed by the federal court for that purpose and retained by him until 1917 under order of court, turned over to the respondent, was taxable as income for the year 1917. The land which produced this oil was government land which had been in the possession of the respondent under placer mining claims. The government contended that as the land had been withdrawn from location by an order of President Taft the respondent was not entitled to a patent. An action was brought to terminate the respondent's right and in that action the receiver was appointed. The respondent was a large operating company holding many pieces of property and this litigation affected only the property in section 2. The trial court determined the matter in favor of the respondent (U. S. vs. No. Am. Oil Co., 242 Fed. 723). This decision was affirmed by the Circuit Court of Appeals of this circuit (264 Fed. 336). The case was finally disposed of by the Supreme Court of March 21, 1920, when it issued its mandate dismissing the appeal thereto in pursuance of a stipulation of counsel. The money thus impounded had been paid over to the respondent after the decision of the district court in 1917.

The Board of Tax Appeals held, in accordance with the contention of the respondent, that the income impounded by the receiver should have been returned by him as his income for the year 1916.

In that regard we quote from the opinion of the Board of Tax Appeals as follows:

> "The respondent affirmatively alleges that the amount impounded in the hands of the receiver in 1916 and released to petitioner in 1917 was income to the petitioner in the latter year. The respondent's principal argument in support of his claim herein is that petitioner was on the cash receipts and disbursements basis in the years 1916 to 1919, inclusive, and, as the amount here involved was not actually received by the petitioner until 1917 it must be taxable income in that year. We think it immaterial whether petitioner's accounts were kept on the receipts and disbursements basis or some other basis as permitted by section 13(d) of the Revenue Act of 1916. The fact is that the income was actually produced in 1916. The sole reason that it did not reach the petitioner in that year was because of the suit by the United States. By reason of that suit a receiver was appointed, who actually received the income, and who should have reported it for taxation. Section 13(c) of the Revenue Act of 1916; United States vs. Chicago & E. I. Ry. Co., 298 Fed. 779; Forstmann vs. Ferguson, 17 Fed. (2d) 659, affirmed, 25 Fed. (2d) 47. If the receiver did not report it, that is no sufficient reason for taxing the petitioner on it in a later year. Accordingly, the amount of $171,979.22 received by petitioner in 1917 is not an item of income in that year."

The petition contends that section 12, subdivision c, of the Revenue Act of 1916, 39 Stats. 756, does not apply, for the reason that it is inapplicable to a receiver holding only a part of the property of the taxpayer corporation. This section provides for returns by receivers where they are operating "the property of business of corporations," etc. It is provided that they "shall make returns of net income as and for such corporations, * * * in the same manner and form as such organizations are hereinbefore required to make returns." It provides that the tax should be assessed in the same manner as if assessed directly against the organizations of whose businesses or properties they have custody or control. It will be observed that as applied to the receiver having possession of the entire property of the corporation, etc., as in the case of receiver in bankruptcy, the statutory provisions with reference to such taxation are readily applicable, but where only a portion of the property of the corporation is in the hands of a receiver it would follow that only a portion of the income of the corporation was in the possession of the receiver and the tax could not be assessed and collected in the same manner as if assessed directly against the taxpayer, unless for purposes of assessment and collection it was in some fashion combined with the income, if any, received directly by the corporation or in case of loss by the corporation and corresponding deduction was made therefrom. While this consideration does not necessarily determine the proper interpretation of the statute (sec. 13[c]

supra) it clearly points to the conclusion that section 13(c) applies only to receivers who are operating the entire property or business of a corporation, etc. The Secretary of the Treasury, soon after the enactment of the statute in 1916, adopted regulations based upon that view of the statute (art. 26, par. 181, art. 209). We quote therefrom as follows:

> " * * * such receiver, trustee, or assignee stands in the place of the corporate officers and is required for the purpose of this title to perform all the duties and assume all the liabilities which would devolve upon the officers of the corporation were they in control. The income which he receives on account of the business transacted is the income of the corporation and, no matter how such income is applied, it is subject to the tax imposed by this title insofar as it exceeds the deductions or allowances authorized by law."

Later additional regulations were promulgated pursuant to 40 Stats. 1057, 1058:

> "A receiver who stands in the stead of an individual or corporation must render a return of income and pay the tax for his trust, but a receiver of only part of the property of an individual or corporation need not. * * * A receiver of the rents and profits appointed to hold and operate a mortgaged parcel of real estate, but not in control of all the property or business of the mortgagor, and a receiver in partition proceedings, are not required to

render returns of income. In general, statutory receivers and common-law receivers of all the property of business of an individual or corporation must make returns."

Article 622, after providing for returns of income by receivers, concludes as follows:

"A receiver in charge of only part of the property of a corporation, however, as a receiver in mortgage foreclosure proceedings involving merely a small portion of its property, need not make a return of income. See articles 424 and 547."

Similar provisions were incorporated in the regulations promulgated under later statutes. If in any case it is proper for a receiver to withhold a return of income on the ground that the property in his custody does not constitute all of the property of the taxpayer, it is clear that where the receiver is appointed because of a controversy over the title to the property which he holds which is only a part of that owned by the taxpayer, it is preeminently a case in which the return should not be made by the receiver who has been appointed for the very purpose of impounding the income to await the determination of the court as to its ownership. If it is to be treated as a part of the income of the owner of the property, the amount of tax thereon would depend upon which one of the two litigants was subsequently determined to be the owner, and this difficulty is particularly marked in the situation presented by the case at bar, where if the income belonged to the government it was not sub-

ject to tax, whereas, if it belonged to the respondent the amount of tax thereon would depend upon the income derived by the respondent taxpayer.

We are informed by the brief filed on behalf of the government that the uniform practice of the Treasury Department with relation to returns from receiverships has been in accordance with the rules of the Treasury Department as above interpreted and that under that practice the receiver of a part only of respondent's property as in the case at bar was neither required nor permitted to make such return.

In view of the departmental construction placed upon the statute, which seems to be in accordance with the intent of Congress, the receiver was not required to make return of this income, but the respondent corporation was required to do so.

It remains to consider whether or not the respondent, who was entitled to the income derived from its property which was impounded by the receiver, was liable for income tax thereon as a part of its income for the year 1917. This depends, in our view, as is contended by the respondent, upon the method adopted by the taxpayer for keeping its books and making its returns. When the receipts were derived from the sale of the land, they belonged to the taxpayer, but were not payable to it until such time as the court ordered its property turned over to it. It is admitted that the taxpayer made its income tax returns upon the cash basis. It thus elected, as it had a right to do, to defer payment of the tax upon its income until it had actually

received the income in cash. It did not receive the income in cash, nor was it entitled so to do until the money was paid over to it by the receiver. In this connection it should be remembered that the returns are made and taxes assessed during the current fiscal year, and while the commissioner has power to levy a tax later if the taxpayer has not made proper returns of its income, this provision is for the protection of the government and not for the protection of the taxpayer. In these numerous cases where a large part of the revenue of oil companies operating upon government land was impounded by receivers in litigation instituted by the government, it would obviously work a great hardship upon the oil companies if a tax were levied upon the entire receipts and they were required to pay the entire tax without having received the income. It is true that this difficulty would be met by the receiver making a return and paying the tax from the income in his hands, but, as we have shown, the receiver was neither required nor permitted to do so in the case at bar, and the question we are considering is that of the duty of the taxpayer in making his income tax return where he has adopted the cash return method. We think it clear that the taxpayer was entitled in such a case to postpone a return of his income until it was received by him, and therefore, that it was taxable as income for the year 1917. The decision of Burnet vs. Sanford & Brooks, 282 U. S. 359, supports the view that we have advanced. In that case Sanford & Brooks were engaged in dredging for the

government. In 1915 they declined to proceed with the work and brought suit against the government for the amount expended in performance of the contract on the ground that the government had failed to make proper disclosure of the character of the dredging to be done. The Court of Claims awarded a judgment against the government in 1918. This judgment was affirmed by the Supreme Court in 1920 (U. S. vs. Atlantic Dredging Co., 253 U. S. 1), and the judgment was paid by the government in 1920. It was contended by the taxpayer that it was entitled to make return of this amount as income for the years 1913–14–15–16, during which the work was done and money expended, with the result that such expenditures made during those years would offset the income. The Supreme Court held that the income was properly taxable as income for the year 1920, there being no evidence that the taxpayer took advantage of the regulation providing for reporting income on long-term contract basis under treasury regulations, or upon an accrual basis under section 212(b).

Income is ordinarily taxable only when it is received. See, also, decision in Herold vs. Mutual Benefit Life Ins. Co., 201 Fed. 918; Maryland Casualty Co. vs. U. S., 251 U. S. 342; Eisner vs. Macomber, 252 U. S. 189, 207; Eckert vs. Burnet, decided April 13, 1931; Lucas, Commissioner, vs. No. Texas Oil Co., 281 U. S. 11; Commissioner vs. Garber, No. 6219 (C. C. A. 9), decided June 8, 1931.

Order reversed.

[Endorsed]: Opinion. Filed June 15, 1931. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 6315.

DAVID BURNET, Commissioner of Internal Revenue,

Petitioner,

vs.

NORTH AMERICAN OIL CONSOLIDATED, a Corporation,

Respondent.

JUDGMENT U. S. CIRCUIT COURT OF APPEALS.

Upon petition to review an order of the United States Board of Tax Appeals.

This cause came on to be heard on the transcript of the record from the United States Board of Tax Appeals and was duly submitted.

On consideration whereof, it is now here ORDERED AND ADJUDGED by this court that the decision of the said Board of Tax Appeals in this cause be, and hereby is reversed.

[Endorsed]: Judgment. Filed and entered Jun. 15, 1931. Paul P. O'Brien, Clerk.

At a stated term, to wit, the September term, A. D. 1931, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the courtroom, in the City of Seattle, in the State of Washington, on Monday, the fourteenth day of September, in the year of our Lord one thousand nine hundred thirty-one. Present: The Honorable CURTIS D. WILBUR, Senior Circuit Judge, Presiding; Honorable WILLIAM H. SAWTELLE, Circuit Judge.

[Title of Cause.]

ORDER DIRECTING MODIFICATION OF OPINION AND DENYING PETITION FOR A REHEARING, ETC.

By direction of the Court, IT IS ORDERED that the opinion heretofore filed by this court in above cause on June 15, 1931, be modified pursuant to opinion this day rendered and filed.

IT IS FURTHER ORDERED that the petition of respondent, filed July 15, 1931, for a rehearing of above cause be, and hereby is denied.

[Title of Court and Cause.]

AMENDED OPINION U. S. CIRCUIT COURT OF APPEALS.

Upon Petition to Review an Order of the United States Board of Tax Appeals.

Before WILBUR and SAWTELLE, Circuit Judges, and NETERER, District Judge.

WILBUR, Circuit Judge.—Petitioner seeks to review a decision of the Board of Tax Appeals with relation to a deficiency tax of respondent for income and profit taxes for the year 1917. The sole question involved is whether or not the sum of $171,972.20 derived from the sale of oil produced on section 2 during the year 1916 impounded in the hands of a receiver appointed by the federal court for that purpose and retained by him until 1917, when, under order of court it was turned over to the respondent, was taxable as income for the year 1917. The land which produced this oil was government land which had been in the possession of the respondent under placer mining claims. The government contended that as the land had been withdrawn from location by an order of President Taft the respondent was not entitled to a patent. An action was brought to terminate the respondent's right and in that action the receiver was appointed. The respondent was a large operating company holding many pieces of property and this litigation affected only the property in section 2. The trial court determined the matter in favor of the respondent (U. S. vs. No. Am. Oil Co., 242 Fed. 723). This decision was affirmed by the Circuit Court of Appeals of this circuit (264 Fed. 336). The case was finally disposed of by the Supreme Court on March 21, 1922, when it issued its mandate dismissing the appeal thereto in pursuance of a stipulation of counsel. The money thus impounded had been paid over to the respondent after the decision of the district court in 1917.

The Board of Tax Appeals held, in accordance with the contention of the respondent, that the income impounded by the receiver should have been returned by him as his income for the year 1916. In that regard we quote from the opinion of the Board of Tax Appeals as follows:

> "The respondent affirmatively alleges that the amount impounded in the hands of the receiver in 1916 and released to petitioner in 1917 was income to the petitioner in the latter year. The respondent's principal argument in support of his claim herein is that petitioner was on the cash receipts and disbursements basis in the years 1916 to 1919, inclusive, and, as the amount here involved was not actually received by the petitioner until 1917 it must be taxable income in that year. We think it immaterial whether petitioner's accounts were kept on the receipts and disbursements basis or some other basis as permitted by section 13(d) of the Revenue Act of 1916. The fact is that the income was actually produced in 1916. The sole reason that it did not reach the petitioner in that year was because of the suit by the United States. By reason of that suit a receiver was appointed, who actually received the income, and who should have reported it for taxation. Section 13(c) of the Revenue Act of 1916; United States vs. Chicago & E. I. Ry. Co., 298 Fed. 779; Forstmann vs. Ferguson, 17 Fed. (2d) 659, affirmed, 25 F. (2d) 47. If the receiver did not report it, that is no suffi-

cient reason for taxing the petitioner on it in a later year. Accordingly, the amount of $171,979.22 received by petitioner in 1917 is not an item of income in that year."

The petitioner contends that § 13(c) of the Revenue Act of 1916, 39 Stats. 756, does not apply, for the reason that it is inapplicable to a receiver holding only a part of the property of the taxpayer corporation. This section provides for returns by receivers where they are operating "the property of business of corporations," etc. It is provided that they "shall make returns of net income as and for such corporations, * * * in the same manner and form as such organizations are hereinbefore required to make returns." It provides that the tax should be assessed in the same manner as if assessed directly against the organizations of whose businesses or properties they have custody or control. It will be observed that as applied to the receiver having possession of the entire property of the corporation, etc., as in the case of receiver in bankruptcy, the statutory provisions with reference to such taxation are readily applicable but where only a portion of the property of the corporation is in the hands of a receiver it would follow that only a portion of the income of the corporation was in the possession of the receiver and the tax could not be assessed and collected in the same manner as if assessed directly against the taxpayer, unless for purposes of assessment and collection it was in some fashion combined with the income, if any, received directly by the corporation or in case of loss by the

corporation and corresponding reduction was made therefrom. While this consideration does not necessarily determine the proper interpretation of the statute (§ 13(c) *supra*) it clearly points to the conclusion that § 13(c) applies only to receivers who are operating the entire property or business of a corporation, etc. The Secretary of the Treasury, soon after the enactment of the statute in 1916 adopted regulations based upon that view of the statute (Art. 26, par. 181, Art. 209). We quote therefrom as follows:

> " * * * such receiver, trustee, or assignee stands in the place of the corporate officers and is required for the purpose of this title to perform all the duties and assume all the liabilities which would devolve upon the officers of the corporation were they in control. The income which he receives on account of the business transacted is the income of the corporation and, no matter how such income is applied, it is subject to the tax imposed by this title insofar as it exceeds the deductions or allowances authorized by law."

Later additional regulations were promulgated pursuant to 40 Stat. 1057, 1058:

> "A receiver who stands in the stead of an individual or corporation must render a return of income and pay the tax for his trust, but a receiver of only part of the property of an individual or corporation need not. * * * A receiver of the rents and profits appointed

to hold and operate a mortgaged parcel of real estate, but not in control of all the property or business of the mortgagor, and a receiver in partition proceedings, are not required to render returns of income. In general, statutory receivers and common-law receivers of all the property or business of an individual or corporation must make returns."

Article 622, after providing for returns of income by receivers, concludes as follows:

"A receiver in charge of only part of the property of a corporation, however, as a receiver in mortgage foreclosure proceedings involving merely a small portion of its property, need not make a return of income. See articles 424 and 547."

Similar provisions were incorporated in the regulations promulgated under later statutes. If in any case it is proper for a receiver to withhold a return of income on the ground that the property in his custody does not constitute all of the property of the taxpayer, it is clear that where the receiver is appointed because of a controversy over the title to the property which he holds which is only a part of that owned by the taxpayer, it is preeminently a case in which the return should not be made by the receiver who has been appointed for the very purpose of impounding the income to await the determination of the court as to its ownership. If it is to be treated as a part of the income of the owner of the property the amount of tax thereon

would depend upon which one of the two litigants was subsequently determined to be the owner, and this difficulty is particularly marked in the situation presented by the case at bar where if the income belonged to the government it was not subject to tax, whereas, if it belonged to the respondent the amount of tax thereon would depend upon the income derived by the respondent taxpayer.

We are informed by the brief filed on behalf of the government that the uniform practice of the Treasury Department with relation to returns from receivership has been in accordance with the rules of the Treasury Department as above interpreted and that under that practice the receiver of a part only of respondent's property as in the case at bar was neither required nor permitted to make such return.

In view of the departmental construction placed upon the statute, which seems to be in accordance with the intent of Congress, the receiver was not required to make return of this income, but the respondent corporation was required to do so.

It remains to consider whether or not the respondent, who was entitled to the income derived from its property which was impounded by the receiver, was liable for income tax thereon as a part of its income for the year 1917. The petitioner asserts in his brief that respondent made its return upon a cash rather than upon an accrual basis. The returns would indicate this to be true for it is expressly stated therein that the returns are based upon receipts and disbursements. Respondent,

however, takes issue with the petitioner's statement and points out that the Board of Tax Appeals failed to determine whether or not respondent's returns were made upon a cash or accrual basis. In either view we think that the amount of this income was properly taxed as income for the year when it was received by the respondent. If the returns were made upon a cash basis it is clearly taxable in the year in which the money was actually received. If, on the other hand, the respondent made its returns upon the accrual basis, as it seems now to contend, it is properly taxable in the year 1917, for it has been held that where tax returns are made upon the accrual basis obligations whose validity is a subject of litigation, is not taxable as accrued income. (Dodge vs. United States, 64 Ct. Cls. 178; Kales vs. Woodworth, 20 F. (2d) 395; Lucas vs. North Texas Co., 281 U. S. 11; Lucas vs. Am. Code Co., 280 U. S. 445.) The respondent, apparently conceding this rule, taxes the position that notwithstanding the fact that it actually received the income in 1917, its right thereto was in litigation until the final decision of the Supreme Court of the United States in 1922, and that therefore the money was not taxable as income until such final determination.

It is said that the Consolidated Tea Co. vs. Bowers, 19 F. (2d) 382, is directly in point on the proposition that the impounded funds cannot constitute income in 1917, but were reportable as income either in 1916 or 1922. We do not think that this case is in point for it deals with the question

as to whether or not the taxpayer is entitled to deduct as a loss a judgment for $10,000 rendered against it by the lower court in 1919, and affirmed by the appellate court and paid in 1921. The taxpayer in that case claimed the right to deduct the loss in 1919 because at that time it set up a reserve against the amount of the judgment. In that connection the district court stated:

> "From a tax income standpoint, both logical and practical reasons seems to me to support the conclusion that a loss should be deductible not in the year when the judgment was rendered but in the year when the claim was adjudicated to be final and definite, or possibly, under certain circumstances, in the year when the claim originated."

We do not think this case is authority for the proposition that money paid to a corporation as a part of its income is not taxable because its right to receive such income is being litigated in the court.

The decision of Burnet vs. Sanford & Brooks, 282 U. S. 359, supports the view that we have advanced. In that case Sanford & Brooks were engaged in dredging for the government. In 1915 they declined to proceed with the work and brought suit against the government for the amount expended in performance of the contract on the ground that the government had failed to make proper disclosure of the character of the dredging to be done. The Court of Claims awarded a judgment against the government in 1918. This judgment was affirmed by the Supreme Court in 1920

(U. S. vs. Atlantic Dredging Co., 253 U. S. 1), and the judgment was paid by the government in 1920. It was contended by the taxpayer that it was entitled to make return of this amount as income for the years 1913–14–15–16, during which the work was done and money expended, with the result that such expenditures made during those years would offset the income. The Supreme Court held that the income was properly taxable as income for the year 1920, there being no evidence that the taxpayer took advantage of the regulation providing for reporting income on long-term contract basis under treasury regulations, or upon an accrual basis under section 212(b).

Income is ordinarily taxable only when it is received. See, also, decision in Herold vs. Mutual Benefit Life Ins. Co., 201 Fed. 918; Maryland Casualty Co. vs. U. S., 251 U. S. 342; Eisner vs. Macomber, 252 U. S. 189, 207; Eckert vs. Burnet, decided April 13, 1931; Lucas, Commissioner, vs. No. Texas Oil Co., 281 U. S. 11; Commissioner vs. Garber, No. 6219 (C. C. A. 9), decided June 8, 1931.

Order reversed.

[Endorsed]: Amended Opinion. Filed Sept. 15, 1931. Paul P. O'Brien, Clerk.

[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing two hundred and three (203) pages, numbered from and including 1 to and including 203, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the respondent and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 4th day of December, A. D. 1931.

[Seal] PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 25, 1932

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(1705)